Annual Report

July 2003 to June 2004

ALBERTA LAW REFORM INSTITUTE

EDMONTON ALBERTA

ANNUAL REPORT

July 2003 to June 2004

ISSN 0229-6276
ISBN 1-896078-33-8

The Institute of Law Research and Reform was established in 1968 by the Attorney General of Alberta, the Governors of the University of Alberta and the Law Society of Alberta. The new name "**Alberta Law Reform Institute**" (ALRI) was adopted in 1989.

Funding for the Institute comes primarily from the Department of Justice and the Alberta Law Foundation. The University provides the Institute with office premises and many additional services, including a cash grant.

The objectives of the Institute set out in the Founding Agreement are as follows:

RESEARCH
To conduct and direct research into law and the administration of justice.

RECOMMEND
To consider matters of law reform with a view to proposing to the appropriate authority the means by which the law may be made more useful and effective.

PROMOTE
To promote law research and reform.

COOPERATE
For the purposes described above, to work in cooperation with the Faculty of Law of the University of Alberta, the Faculty of Law of the University of Calgary, and with others.

Program

The Institute's program is the delivery of law reform proposals. It does so by specific projects.

Project Selection Criteria

The rationale for the program content includes a number of component principles:

- each project must meet a perceived community need by providing a remedy for a deficiency in the law or in the administration of justice.

- a project must be one that neither the political process nor the administrative process is likely to deal with effectively.

- each project must be one that falls within the capability of the Institute, as a group of lawyers acting with the best available advice from segments of the public and from law and other disciplines.

- the total program must make contributions both to technical areas of law and to areas of law involving social policy.

We Need You

Law reform must be an interactive process. We consult closely and continuously with our intended audience, initially to identify appropriate projects, and later to obtain feedback on issues and proposals. The quality of our product is directly related to our ability to recognize the needs of our audience, and to provide a sensitive response to them.

Board:

C.W. Dalton, Q.C.
A. de Villars, Q.C.
A.D. Fielding, Q.C.
Hon. Judge N.A. Flatters
Dr P. Hughes
W.H. Hurlburt, Q.C.
H.J.L. Irwin, Q.C.
P.J.M. Lown, Q.C.
A.D. Macleod, Q.C.
Hon. Justice B.L. Rawlins
Professor W.N. Renke
Mr. D.R. Stollery, Q.C.
Hon. Justice N.C. Wittmann, Chairman

Administrator:

Carol Fowlie

Support Staff:

Ilze Hobin
Jenny Koziar
Marlene Welton

Research Assistants:

Darryl Douglas
Orrice Harron
Kristen Lewicki
Jill Miles
Raisa MacLeod
Weston Rudd

Legal Staff:

Peter J.M. Lown, Q.C., Director
Tom Archibald (*contract*)
C.R.B. (Dick) Dunlop (*contract*)
Debra Hathaway
William H. Hurlburt, Q.C.
Janice Henderson-Lypkie (*contract*)
Cynthia Martens
Sheryl Pearson
Sandra Petersson
June Ross, Q.C. (*until her appointment as a Justice of the Court of Queen's Bench in December 2003*)
Margaret A. Shone, Q.C.
Hilary Stout
Doris Wilson, Q.C. (*contract*)

The Institute's office is located at:

402 Law Centre
University of Alberta
Edmonton AB
CANADA T6G 2H5

Telephone: (780) 492-5291

Fax: (780) 492-1790

Internet Address:
reform@alri.ualberta.ca

Website:
http://www.law.ualberta.ca/alri

105-01884/

What We Do i
Program i

Who We Are iii

Acknowledgments ..... Page 1

The ALRI Process ..... Page 5
Projects – From Suggested Topic to Approved Project ..... Page 5
Categories of Publications ..... Page 6
Post Report Activity ..... Page 8

Publications Summary ..... Page 9
Final Report No. 90 – Limitations — Standardizing Limitation Periods for Actions on Insurance Contracts ..... Page 9
Final Report No. 91 – Exemption of Future Income Plans ..... Page 13
Final Report No. 92 – Exemption of Future Income Plans on Death ..... Page 20
Final Report No. 93 – Family Law Project – The Conclusion ..... Page 27

Consultation Memorandum No. 12.6 – Promoting Early Resolution of Disputes by Settlement ..... Page 29
Consultation Memorandum No. 12.7 – Discovery and Evidence Issues: Commission Evidence, Admissions, Pierringer Agreements and Innovative Procedures ..... Page 34
Consultation Memorandum No. 12.8 – Pleadings ..... Page 43
Consultation Memorandum No. 12.9 – Joining Claims and Parties, Including Third Party Claims, Counterclaims, and Representative Actions ..... Page 49

Work in Progress ..... Page 53
Creditor Access to Future Income Plans ..... Page 53
E-Commerce ..... Page 53
Enduring Powers of Attorney ..... Page 54
Marshalling Rules ..... Page 54
Matrimonial Property Act ..... Page 55
Rules of Court ..... Page 55
Standardized Limitation Periods for Actions on Insurance Contracts ..... Page 56
Title Insurance ..... Page 56
Western Canadian Law Reform Agencies ..... Page 57
Wills Act ..... Page 57

Year in Review ..... Page 59

List of Publications ..... Page 63
FINAL REPORTS ..... Page 63
REPORTS FOR DISCUSSION ..... Page 73
ISSUES PAPERS ..... Page 75
DISCUSSION PAPERS ..... Page 76
RESEARCH PAPERS ..... Page 77
CONSULTATION MEMORANDA ..... Page 79
PRACTICE MANUALS ..... Page 81
OTHER PUBLICATIONS ..... Page 81

We were fortunate during this year to have a relatively stable Board and personnel. On the support staff side we continue to enjoy the dedicated service of our small but very efficient cadre of support staff. Their ability to handle all the additional tasks and responsibilities of the rules activity is amazing. On the counsel side, our Calgary counsel, Cynthia Martens took a study leave to attend New York University, and our lead counsel was most fittingly appointed to the Court of Queen's Bench. We were fortunate to have the benefit of Hilary Stout joining us for a year in Calgary, Doris Wilson continuing to work with us in Edmonton, and part of Tom Archibald's time during his visiting appointment by the Faculty of Law. In addition, we had the benefit of Dick Dunlop and Janice Henderson-Lypkie working on projects, and Dick Dunlop, Wayne Renke, Francis Price, and David Elliott working with various sub-groups on the Rules Project.

There is one change which I wish to note in particular. The Attorney General nominates two members to our Board and one of those positions has been occupied since 1984 by Mr. Clark Dalton, Q.C. Clark is the head of the Legal Research and Policy Division within the department and as such has been a vital part of our link to departmental activities and a very significant contributor to our Board. On June 30 of this year, Mr. Dalton marked 20 years and 3 months of service and we were sad to see him leave but were able to congratulate him and wish him well on his forthcoming retirement. Clark has been a member of the Board for more than half of the life of the Institute itself, and we owe him a huge debt of gratitude for his work and dedication. One resignation means another appointment, and we were more than happy to welcome the presence of Ms. Peggy Hartman, the Associate Deputy Minister, Civil, as our Board member appointee from the Attorney General. Peggy is no stranger to our work and her presence on our Board will be a big advantage.

Another changed occurred June 30. Dean Patricia Hughes determined that demands on her time as Dean precluded her from being involved in ALRI as much as she would like. Dean Hughes resigned effective June 30 and will be replaced by Professor Keith Yamauchi in September 2004. We are grateful for the brief but productive time Dean Hughes spent on our Board.

The interaction and coordination that the Rules Project demands with many other bodies, merely highlights the fact that the Institute enjoys very cordial and productive relationships with many elements within the legal community. Our relationship with the profession through the Law Society of Alberta and the Canadian Bar Association is a significant contributor to our program and the information we can bring to our projects. We acknowledge with gratitude the work of Law Society presidents Cheryl Gottselig, Q.C. and Larry Anderson, Q.C. and CBA presidents Don Higa, Q.C. and Walter Pavlic. Similarly, our ability to coordinate our project work with the program offerings of organizations such as the Legal Education Society of Alberta, allows us to provide better service to the profession. We particularly acknowledge the work of Mr. Hugh Robertson, Q.C. and Mr. Paul Wood in that area.

On the funding side we received some valuable assistance this year from the Department of Justice which was able to increase our funding slightly after it had been flatlined at the same level for the last 10 years. Additionally, and perhaps just as important, we continue to enjoy a very cordial and productive working relationship with the Department through its Minister, Mr. Hancock, and its Deputy, Mr. Matchett.

We also welcomed the opportunity to work with Mr. David Aucoin who took over as executive director of the Alberta Law Foundation, and there appears to be no break in the excellent working relationship which we previously enjoyed with Mr. Owen Snider.

On June 30, Peter Lown retired from the University of Alberta and, therefore, his secondment to ALRI terminated at the same time. However, the Board has retained Professor Lown as Director on contract for a further term of up to four years. In addition, Professor Lown becomes a Professor Emeritus at the University of Alberta and is expected to have an honourary appointment within the Faculty of Law.

The Institute is not a statutory commission. It exists by five-year contract on annual funding. The founding agreement has been renewed now seven times. The faith of our founders in creating the Institute and their confidence in its ongoing work is a tribute to the work of the Board and staff, a tribute they should accept with pride and as a recognition of the value of their contribution to the administration of justice and the law in the Province of Alberta.

Projects – From Suggested Topic to Approved Project

Through various sources, potential topics for research and law reform are brought to the attention of the Director. The Director and Counsel review and categorize the topics and Counsel identifies the critical research issues. Topic descriptions are prepared and presented to the Board for information and comment. The four general phases are:

1. **Gather suggestions**
   - Thumbnail sketch of topic

2. **Gauge interest of community and urgency of topic**
   - Identify community
   - Create material and set response time
   - Consider interest levels

3. **Business Plan for Topic**
   - Resources
   - Time
   - Completion

4. **Board Approval of Project**

Once the project is approved and assigned, a number of features take on significance.

A Collaborative Approach

A project is a collaboration that requires the ALRI Board, the Project Management Committee, the Project Advisory Committee, Counsel and Administrative staff to develop and manage the project cohesively. The Project Management Committee is chaired by a Board member with a second Board member appointed to the committee. The Director assigns Lead Counsel and Co-Counsel. The Project Advisory Committee is established and populated with lawyers, representatives of interested organizations and members of the public.

Regular Progress Reporting

Progress reports should be available for the Project Management Committee, the Director and other interested parties on a regular basis. At critical stages the reporting frequency may be increased. Progress reports must provide the Project Management Committee with a working understanding of the overall plan and the progress made against the plan.

A Consistent Format

ALRI has a preferred method of presentation for its publications and for materials prepared for Board meetings by Counsel.

Implementation Objectives

Identification of potential implementation objectives begins at the Feasibility Study phase. These objectives continue to take shape as a result of discussion amongst the Project Advisory Committee members regarding the project/research issues. Planning for achievement of these objectives usually commences not later than the final third of the Project phase.

Categories of Publications

While we tend to use different types of reports at different stages, the format is not rigid. Normally research papers merely share the results of our work. For example, our report on Recognition of Rights and Obligations in Same Sex Relationships was intended primarily to inform the ongoing debate. On the other hand, our report on Referees reviewed the history and proposed a practical change which was later implemented.

Normally our reports for discussion or consultation memoranda provide all the necessary background information for the reader to provide an informed response. Occasionally we will either update or replicate that information in a final report so as to make the recommendations a more coherent whole. For example, our Final Report on Surrogate Rules was fairly brief because it was complemented by the Practice Manual which we prepared with the Legal Education Society of

Alberta. Cost of Credit Disclosure was complemented by the provisions of Part 9, *Fair Trading Act* and Cost of Credit Disclosure Regulations. Our reports on Arbitration, Limitations, and Trustee Investment Powers are much fuller, and the annotated versions of the draft statute have proven very useful in the implementation process, and in the education process for the Bar once the legislation has been passed.

Finally, it is important to note the volume of reports which are now housed on our website, which provides a single entry point to the compendium of ALRI publications.

The five main types of documents produced by the Alberta Law Reform Institute are:

Research Paper
- Shared Data and Research
- Early Release

Issues Paper
- Develops Policy Issues
  Outlines Possible Solutions
- Seeks Comment and Consultation

Consultation Memorandum
- Focussed Policy Issues
- Identified and Discrete Audience
- Seeks Comment Prior to Final Proposals

Report for Discussion
- Issues and Background
- Proposed Solutions
- Seeks Comment before Proceeding

Final Report
- Considered Position
- Draft Legislation
- Submission for Action

Post Report Activity

Our work does not end with the final report. Significant post-report activity is involved in:

- explanations to "client" departments,
- response to legislative and drafting requests
- assistance to implementation groups
- presentation to legal profession

While reports are under consideration, we carry out a monitoring role to ensure that recommendations are kept up to date and other developments are taken into account.

During this year ALRI issued four Final Reports as well as four Consultation Memoranda on the Rules of Court Project. The summaries are set out below.

Final Report No. 90
Limitations — Standardizing Limitation Periods for Actions on Insurance Contracts

Presently limitation periods for bringing actions against insurers for failing to honour insurance policies depends on the type of insurance. The *Insurance Act* contains statutory provisions which specifically set out limitation periods for certain types of insurance. The *Insurance Act* also requires other specific types of insurance policies to contain "Statutory Conditions" which prescribe their own limitation periods. Any other type of insurance would *prima facie* be subject to the default provisions in the *Limitations Act*.

In two recent decisions, *KP Pacific Holdings Ltd. v. Guardian Insurance Co. of Canada* [1] and *Churchland v. Gore Mutual Insurance Co.*,[2] the Supreme Court of Canada addressed the issue of disparate limitation periods for different types of insurance policies and the problems created thereby, particularly in the modern era of comprehensive or multi-peril policies. The Supreme Court has called upon all provinces to amend their Insurance Acts to rectify the confusion caused by disparate limitation periods in different types of insurance contracts.

Inconsistent limitation periods have caused confusion for both insured and for lawyers, and have resulted in a considerable amount of litigation over missed limitation periods.[3] In light of the multitude of actions arising from the present

---

[1] 2003 SCC 25, 225 D.L.R. (4th) 193.

[2] 2003 SCC 26, 225 D.L.R. (4th) 202.

[3] Examples of reported cases include those below, notes ?-?; see also *Matwychuk v. Western Union Insurance Co.* (1992), 134 A.R. 230 (Q.B.), rev'd [1994] A.J. No. 1084 (C.A.); *D'Andrea v.*

state of the law, it would be desirable to standardize and rationalize all limitation periods for actions against insurers on policies.

Recommendation No. 1
Limitation periods for actions on all types of insurance contracts be standardized.

There is no principled reason for having a one year limitation period for actions on insurance contracts, rather than the two year (or ultimate 10 year period) provided for in the *Limitations Act*. Nothing in the case law indicates why the one year limitation period for actions against insurers was adopted originally. Another reason for changing the limitation period for actions against insurers to those in the *Limitations Act* is that to do so would be consistent with the consumer protection aspect of the *Insurance Act*.

The Institute proposes to retain the provisions currently in the *Insurance Act* that require an insured to give timely notice of proof of loss. So long as these notice provisions are retained, the potential lack of notice of a claim is not a convincing argument in favour of shorter limitation periods for commencing actions against insurers.

Recommendation No. 2
Insurance contracts should be subject to the limitation periods in the *Limitations Act*.

As our recommendation is that there should not be different limitation periods for actions on insurance contracts, all limitation periods currently in the *Insurance Act* should be removed. By default, then, actions on insurance contracts would be governed by the *Limitations Act*.

Wawanesa Mutual Insurance Co. (1995), 164 A.R. 31 (Q.B.); *Montgomery v. Canada West Insurance Co.* (1996), 191 A.R. 1 (Q.B.); *Yara Entertainment Inc. v. Royal Insurance Co. of Canada*, [1998] A.J. No. 1583 (Q.B.).

Recommendation No. 3
The limitation periods for all insurance contracts should be centralized in the *Limitations Act*.

During our consultations some questioned when the limitation period for an action on an insurance contract would commence under the *Limitations Act*. Ultimately the Institute feels that there was no need to create a special commencement date for actions on insurance contracts – the limitation period should commence in accordance with the relevant provisions in the *Limitations Act*. The notice provisions that require an insured to give timely notice of the loss should be retained.

The present provisions in the *Limitations Act* are suitable and appropriate for actions on insurance contracts. Under s. 3(1), the time for an action commences when a claimant ought to have known:[4]

(i) that the injury *for which the claimant seeks an order* occurred; **and**
(ii) *that the injury was attributable to the conduct of the defendant*.
(emphasis added)

In most cases involving actions on insurance contracts, this would likely occur when the insurer denies the claim. When bringing an action against the insurer, the injury for which the claimant seeks an order is not the actual loss occasioned by the peril (i.e. the damage caused by a fire).The actual loss results from the insurer breaching the insurance contract by failing to pay out the claim.

Recommendation No. 4
Limitation periods for actions against insurers should commence in accordance with s. 3 of the *Limitations Act*.

---

[4] *Limitations Act*, R.S.A. 2000, c. L-12, s. 3(1).

The issue of whether insurers should be permitted to contractually shorten limitation periods under the *Limitations Act* may now be moot in light of an impending amendment to s. 7 of the *Limitations Act*:[5]

> (2) An agreement that purports to provide for the reduction of a limitation period provided by this Act is not valid.

The *Justice Statutes Amendment Act, 2002* was given Royal Assent on May 14, 2002, but some issues have arisen relating to the proclamation of this section. This amendment was proclaimed to be effective on June 1, 2003. It was then "unproclaimed" on May 28, 2003. Whether the *Limitations Act* should preclude any party from contractually abridging a limitation period is an issue that is outside of the scope of this project, and the Institute does not make any comment nor recommendation about this principle generally. We will only address the issue as it relates to the question of limitation periods for actions on insurance contracts.

The insurance contract is a classic example of the party who is in the better bargaining position imposing a detrimental limitation period on the more vulnerable party. A contractual limitation period which is shorter than that to which the insured would otherwise be entitled under the *Limitations Act* is detrimental to the insured, as it could have the effect of preventing an insured from pursuing what may otherwise be a *bona fide* claim. Precluding insurers from inserting contractual provisions which limit insureds' rights to bring legitimate actions would be consistent with the consumer protection aspect of the *Insurance Act*.

Recommendation No. 5
Insurance companies should not be able to contractually impose shorter limitation periods in insurance contracts.

---

[5] *Justice Statutes Amendment Act, 2002*, S.A. 2002, c. 17, s. 4(4).

Final Report No. 91
Exemption of Future Income Plans

A. Purpose and Scope of the Report

The purpose of this report is to consider whether registered retirement savings plans (RRSPs), deferred profit-sharing plans (DPSPs), and registered retirement income funds (RRIFs) should be wholly or partly exempt from creditors' remedies. The report will also consider the exempt status of locked-in retirement accounts (LIRAs), life income funds (LIFs), and locked-in retirement income funds (LRIFs).

Alberta law generally does not permit creditors to enforce their claims or judgments against pensions, or against annuities and RRSPs issued by insurance companies. Pension statutes contain sections which protect pensions from enforcement. The *Insurance Act* does the same job for insurance products, including most annuities and RRSPs. However, Alberta law does permit a creditor to enforce a money claim or judgment against the non-insurance RRSP of the debtor. There is an unfairness in this exposure of non-insurance RRSPs, compared to the virtually complete protection of insurance RRSPs and annuities, and most pensions.

When pensions, insurance annuities, and RRSPs or RRIFs start to make payments to the depositor, the creditor's appropriate remedy is to attach the money obligation. Exemptions are again an issue. Most pension and insurance statutes expressly prohibit garnishment of benefits or money obligations. However, obligations to pay out of a non-insurance RRSP or RRIF (after tax is deducted) will be fully garnishable. Again, creditors' remedies law treats differently obligations which appear to be similar.

During the summer of 2001, the Alberta Law Reform Institute (the Institute) conducted a feasibility study to consider whether it should conduct a project on the exemption of RRSPs, DPSPs and RRIFs. The Institute Board decided in September, 2001, to undertake the Future Income Plans project, and, in

June, 2002, published *Creditor Access to Future Income Plans: Consultation Memorandum No. 11*. The Institute received several responses to the consultation memorandum which have been very helpful in the writing of this report.

B. Saving for Retirement

It is obvious that people who retire from their work need resources to survive, although recent studies make it clear that many Canadians have not saved enough to provide an adequate income during retirement. In the future, people will need to take more responsibility for saving for their retirement. People live longer, while government pensions, medicare and other benefits for the retired are tending to lag behind inflation. The trend since 1990 has been towards fewer pensionable jobs as a percent of the total available. It may be unrealistic for people to assume that they will be able to supplement their savings by working after retirement.

With the decline in pensionable employment, RRSPs have become an enormously popular way for people to save for retirement. However, the majority of cases have concluded that RRSPs and similar plans are exigible, and that obligations to pay money from such plans are garnishable. Future income plans provided by insurance companies are exempt from creditors of the depositor where the plans fit within the limited *Insurance Act* exemption sections. No such protection exists for non-insurance products in Alberta. Other provinces have adopted varying degrees of exemption protection for insurance and non-insurance future income plans.

C. RRSPs, DPSPs AND RRIFs Should be Totally Exempt

In our view, insurance and non-insurance RRSPs, DPSPs and RRIFs as defined in the *Income Tax Act*, and obligations to pay money out of such plans, should be totally exempt from all prejudgment and postjudgment creditors' remedies. The exemption will not apply to non-money claims or judgments based on property rights or on the enforcement of security taken on the future income plan, assuming such a security to be permitted by law. No distinction should be drawn among remedies nor should the exemption be different between insurance and non-insurance products. Put simply, these assets, like pensions, are so similar and so

essential to the survival of individuals that they should be completely protected from creditors. The arguments for this conclusion can be summarized as follows:

(1) The present patchwork of exemptions for pensions, insurance and non-insurance retirement income plans is incoherent and unjust.

(2) Canadian law recognizes saving for retirement as a value worthy of protection and encouragement.

(3) Pensions and insurance RRSPs are totally exempt, and we have noted little call for diluting these exemptions. Pensions, insurance and non-insurance retirement income plans all serve the same purpose, saving for retirement, as evidenced by their common tax treatment. RRSPs, DPSPs and RRIFs are pension-substitutes and should enjoy the same exemption in creditor-debtor law.

(4) People save for retirement in various ways, but the *Income Tax Act* has singled out pensions, RRSPS, DPSPs and RRIFS as entitled to similar forms of tax exemption.

(5) Pensions, RRSPs, DPSPs and RRIFs may not be necessary while the debtor is working, but will be crucial to his or her survival during the years of retirement (and unemployment). Obligations to pay out of such plans are usually attached during retirement years when people are in a poor position to earn more money by working overtime, working a second job, or finding a better job. Retirement is when the income is needed and cannot be replaced or supplemented. Any enforcement process that renders retirees destitute simply ensures that they will become the responsibility of the state.

(6) A substantial amount of capital is necessary to fund even a modest pension or retirement income.

(7) Many, perhaps most, debtors either have no RRSP or have long since cashed it in before their financial affairs collapse completely. The practical impact of a total exemption will be minimal in most situations.

(8) To some extent, creditors can protect themselves by exercising care in extending credit or delaying collection proceedings.

(9) RRSPs are often held by the self-employed and entrepreneurs. Their exemption encourages entrepreneurs to continue an economically beneficial activity which may entail risks unrelated to any wrongdoing on the part of the entrepreneur.

We do not propose that the exemption be limited to locked-in plans. RRSPs are intended, among other things, to provide a source of retirement income, whether the plan is locked in or not. The *Income Tax Act* does not limit the RRSP program to locked-in plans. Such plans are de facto locked in for two reasons: (1) funds and property withdrawn from a plan will be taxable, and (2) our proposed exemption applies to property in a plan and does not apply to property once withdrawn. This double hit, plus the desire to continue retirement savings, will give depositors a strong incentive to leave future income plans alone. Ultimately, we see the goals of pensions and future income plans, whether locked in or not, as the same. They are intended and largely used for retirement saving. They all fall within our desired policy which is to protect such retirement nest-eggs from enforcement proceedings by creditors.

We would not limit the proposed exemption of future income plans by a dollar cap. Our basic policy is that tax-protected vehicles for retirement saving including pensions and RRSPs should be exempt. Pensions and insurance RRSPs are exempt now without any dollar limit except the de facto ceiling imposed by the *Income Tax Act*. We doubt that overcontribution as a debt avoidance device is likely to occur as it results in heavy and continuing tax penalties.

The Uniform Law Conference of Canada (ULCC), in its 1998 report, proposed as one limitation on abuse that the exemptions from enforcement and garnishment should cease to exist if the plan ceases to be an RRSP, DPSP or RRIF for the purposes of the *Income Tax Act*. In our view, this limitation on the exemption fits with our goal to exempt retirement savings plans registered as such under the *Income Tax Act*. If a particular retirement savings agreement is not a plan for the purposes of the *Income Tax Act*, it is not for our purposes either.

D. Same Exemption for Insurance and Non-Insurance Plans

From the beginning of this project to now, the overwhelming consensus among consultants has been that RRSPs, DPSPs and RRIFs offered by insurance and non-insurance providers are so similar that a disparity in exemptions is unfair and unreasonable, especially when compared to the exempt status of most pensions. Assets without any relevant difference should be subject to the same exemption.

In our view, the proposed exemption should be added to the *Civil Enforcement Act* and should apply notwithstanding s. 580(2) of the *Insurance Act*. The proposed exemption will override the *Insurance Act* exemption section only as to RRSPs, DPSPs and RRIFs and only as to exemptions. Section 580(2) of the *Insurance Act* remains in force and unmodified as to all other insurance products, such as annuities. We do not favour the creation of two similar or identical exemption provisions, one in the *Insurance Act* and the second in the *Civil Enforcement Act*. The danger is that, over time, the sections will drift away from each other, leading to the present situation of one rule for insurance products, and a different rule for the rest. This possibility would defeat our goal to create one exemption for all RRSPs, DPSPs and RRIFs.

The new exemption provision in the *Civil Enforcement Act* will not include some of the limitations in s. 580(2) of the *Insurance Act*. Because the new provision applies to insurance and non-insurance products, it should not include specific references to insurance or the requirement that the plan include an undertaking to provide an annuity. These limitations will continue in the exemption sections of the *Insurance Act* as to insurance products other than RRSPs, DPSPs and RRIFs.

Section 580(2) of the *Insurance Act* is limited to plans which designate a beneficiary who is "a spouse or adult interdependent partner, child, grandchild or parent, or any of them." This provision makes sense in an insurance statute where beneficiaries are essential. The Institute is told that the overwhelming majority of insurance and non-insurance RRSPs, DPSPs and RRIFs designate beneficiaries, and it is probably prudent to do so. But is there any need for creditor-debtor law to require a beneficiary for an exemption to exist? We think that the answer is no. The policy underlying our exemption proposals is that, while the debtor is alive, his or her savings for retirement should be protected. Whether or not the plan names a beneficiary is irrelevant to this goal, although it may be vital to proper financial and estate planning. The requirement to name a beneficiary is a trap for the unwary and should be omitted.

E. Same Exemption for LIRAs, LIFs and LRIFs

When an employee in a pensionable job terminates the employment before the normal retirement date, he or she has choices about the money in the pension plan. The employee may (1) leave the money in the plan, (2) transfer it to the new employer's pension plan (depending on the terms of the two plans), (3) purchase an annuity from an insurance company, or (4) buy a locked-in retirement account (LIRA). Assuming that the employee makes the most popular choice and purchases a LIRA, the employee may, at a date usually prescribed by the original pension plan, move the money from the LIRA into a life income fund (LIF) or a locked-in retirement income fund (LRIF), both of which permit withdrawals of money. Most commentators regard LIRAs as RRSPs, and LIFs and LRIFs as types of RRIF. If this were the whole story, the Institute report could propose that RRSPs be defined to include LIRAs, and RRIFs be defined to include LIFs and LRIFs. The locked-in plans are close enough to the usual RRSP or RRIF to merit the same treatment in judgment enforcement law.

The matter is complicated, however, by pensions legislation which regulates LIRAs, LIFs and LRIFs. Alberta pension statutes contain exemption sections which may apply to such plans. As we reviewed Alberta pensions legislation, we became struck by the incomplete, uncertain and inadequate nature of exemptions in the Alberta statutes, especially as to money payable from such plans. We therefore propose that the exemption of LIRAs, LIFs and LRIFs should be included in the Institute's general proposals for amendments to the *Civil Enforcement Act*. That is, (1) the term RRSP in the *Civil Enforcement Act* should be defined to include LIRAs; (2) the term RRIF in the same Act be defined to include LIFs and LRIFs; and (3) the section in the *Civil Enforcement Act* exempting RRSPs, DPSPs and RRIFs should expressly apply notwithstanding the *Public Sector Pension Plans Act*, the *Teachers' Pension Plans Act* and s. 85 of the *Employment Pension Plans Act*. The effect of our proposals is to override the exemption sections of Alberta pensions statutes and regulations only as to the exemption of LIRAs, LIFs and LRIFs.

F. Coming into Effect: Transition

The new exemption legislation should not be delayed artificially after passage but should come into force upon Royal assent. The creation of an exemption for non-exempt RRSPs, DPSPs and RRIFs corrects an injustice in the present law which should not continue longer than necessary. The normal legislative process has built-in delays which will give critics of the proposal ample time to make representations to the government, if they have not already commented on this report. The new exemption provision should apply to all debt, old or new, and should come into force on assent.

We propose one limit to the above proposal. Creditors may have sued their debtors and commenced enforcement processes against RRSPs, DPSPs and RRIFs. It is unfair to such creditors to have the rules changed half way through. This is retroactive legislation which is rejected by most governments, including Alberta. We therefore propose that the new exemption should not apply to an enforcement process commenced against an RRSP, DPSP or RRIF before this provision comes into force.

G. Transfers From One Registered Plan to Another

Owners of registered plans often transfer funds or property from one future income plan to another. If money or property is withdrawn from a plan, it is likely not exempt until it is safely deposited to the second plan. A depositor may effect a transfer of funds or property in at least two ways. The depositor may direct the first plan to transfer the funds or property directly to the second plan without the depositor receiving anything. Secondly, the depositor may close the first plan, receive the funds or property, and later open a second plan and deposit the funds or property into the new plan. Most depositors transfer money or property directly from one plan to another because no tax is assessed on such a transfer. If the depositor follows the second course and collapses the first plan, then tax will be withheld. One consultant told us that 99.9% of people transferring from one RRSP to another will do so directly.

In our view, the new exemption should extend to direct payments or direct transfers of funds or property from one registered future income plan to another as

permitted by the *Income Tax Act*. The intention is clearly not to transfer property to the debtor but to continue the retirement saving scheme, albeit with a new depository. The *Income Tax Act* singles out this kind of direct transfer as being tax-free. It is difficult to see how the direct transfer of property or funds between registered plans can result in a dishonest advantage to the debtor, as the property will not be in the debtor's hands.

On the other hand, we do not believe that there should be any extension of the exemption where the depositor withdraws money from a registered plan and holds it with perhaps an intention of depositing the money into a new plan. The difference is that the debtor now has the plan funds or property in his or her possession, and is free to use them for any purpose. If the intention behind our exemption proposal is to protect retirement savings, then that exemption cannot extend to funds or property which the debtor is free to use for any purpose.

Final Report No. 92
Exemption of Future Income Plans on Death

In June 2002, the Alberta Law Reform Institute issued Consultation Memorandum No. 11, *Creditor Access to Future Income Plans*. This Consultation Memorandum examined the issue of whether registered retirement savings plans ('RRSPs'), registered retirement income funds ('RRIFs') and deferred profit sharing plans ('DPSPs') should be wholly or partially exempt from remedies of the creditors of the planholder before and after the death of the planholder. After considering the matter further, the Institute decided to examine the protection during life separately from the protection after death. This separation reflects the different considerations that come into play once the planholder has died, including taxation upon death and administration of the estate. Report No. 91, *Exemption of Future Income Plans* deals with creditor protection during the lifetime of the planholder. This report deals with creditor protection upon death of the planholder.

The principal issue in this report is whether RRSPs, RRIFs and DPSPs should be wholly or partially exempt from the remedies of the creditors of the deceased planholder. The report looks at all RRSPs, RRIFs and DPSPs, whether sold by insurance companies or not. It also looks at locked-in RRSPs and RRIFs which are created and regulated by pension legislation. A locked-in retirement account ('LIRA') is a type of RRSP designed to hold the commuted value of locked-in pension funds. After reaching a certain age, the owner of a LIRA must transfer the funds to a locked-in income fund, such as a life income fund ('LIF') or a locked-in retirement income fund ('LRIF'). A LIF and LRIF are special types of RRIFs. The result will be recommendations that apply to all RRSPs, RRIFs and DPSPs and these recommendations differ somewhat from the creditor protection that now exists for: (1) insurance RRSPs and RRIFs, and (2) LIRAs, LIFs and LRIFs. This report does not deal with other future income plans such as pensions, annuities not falling into the definition of RRSP in section 146 of the *Income Tax Act*, and retirement compensation arrangements. The other issue addressed in this report is whether following the death of the planholder, a RRSP, RRIF or DPSP should be exempt from attachment by creditors of the designated beneficiary.

The existing law as to when an RRSP, RRIF or DPSP is exempt from attachment or seizure by the creditors of the deceased planholder is convoluted. The question leads one into the area of law found at the intersection of insurance legislation, pension legislation, beneficiary designation legislation and the law of creditor-debtor remedies. The success of the creditor depends upon whether the financial institution that administers the RRSP or RRIF is or is not an insurance company, the source of funds used to purchase the RRSP, and the interpretation of beneficiary designation legislation. RRSPs and RRIFs sold by insurance companies are not assets of the estate of the deceased planholder and are not available for payment of debts of the deceased planholder if there is a valid beneficiary designation in favour of someone other than the estate of the deceased planholder. LIRAs, LIFs and LRIFs are governed by pension legislation and are also likely protected from attachment by creditors of the deceased planholder. It is unclear whether other RRSPs and RRIFs are available for payment of debts of the deceased planholder in situations in which the planholder has designated a beneficiary other than the estate. The answer depends upon the judicial

interpretation of section 47 of the *Trustee Act*. There is no case law on this point in Alberta, but courts in other jurisdictions have come to three different conclusions. One line of cases held that the plan remains an asset of the estate and is available for payment of debts. The second line of cases held that the plan remains an asset of the estate but is the last asset to be used to pay the debts of the deceased planholder. The third line of cases held that the plan was not an asset of the estate and, therefore, was not available to satisfy debts of the deceased planholder. It is also unclear whether creditors of the deceased planholder can attach a DPSP. The result is that RRSPs, RRIFs and DPSPs are not all created equally when it comes to creditor protection, although all RRSPs, RRIFs, DPSPs are instruments for retirement savings.

It has long been Canadian public policy to encourage people to save for their retirement and to rely on private resources instead of public pensions. The *Income Tax Act* provides generous tax benefits to people who participate in pensions, RRSPs, RRIFs and DPSPs, as well as for the surviving spouse or common-law partner, or financially dependent child or grandchild of such a person. Alberta has pension legislation which exempts pension benefits from execution and garnishment, both during the lifetime of the employee and upon death of the employee or former employee. These exemptions extend to benefits received under the pension plan by the surviving pension partner, or, if there is no surviving pension partner, by the designated beneficiary. The pension legislation also creates rights for the surviving pension partner that supersede any beneficiary designation. RRSPs and RRIFs sold by insurance companies do not form part of the estate of the deceased planholder if there is a valid beneficiary designation in favour of someone other than the estate of the planholder, nor are such insurance policies available for payment of the debts of the deceased planholder. This public policy guards against poverty in old age both for the employee and his or her dependants.

RRSPs and RRIFs for the self-employed are the equivalent of pension plans for employees. DPSPs are also retirement vehicles that are used to provide retirement income to employees. Given that RRSPs, RRIFs and DPSPs are retirement vehicles that serve the same purpose as pensions, they are deserving of

creditor protection similar to that extended to pension plans, and this protection should exist both during the lifetime of the employee and upon death of the employee. Furthermore, all RRSPs and RRIFs should receive such protection, and it should not be dependent upon whether they were sold by insurance companies or were purchased with pension funds. In our opinion, there is no practical difference among ordinary RRSPs and RRIFs, insurance RRSPs and RRIFs, LIRAs, LIFs, LRIFs and DPSPs that would justify different treatment in this context. All these plans are retirement vehicles that serve the same purpose. In our opinion, the differential treatment that presently exists is incoherent and indefensible. The guiding principle should be that, subject to limited exceptions, all RRSPs, RRIFs and DPSPs including insurance products and products regulated by pension legislation should be shielded from attachment by creditors of the deceased planholder.

As always, there are a variety of options that could be used to implement this policy. One option is to enact that RRSPs, RRIFs and DPSPs do not form part of the estate of the deceased planholder if there is a beneficiary designation to someone other than the estate and, therefore, are not available to satisfy the creditors of the deceased planholder. The second option is similar, but it vests the plan in the designated beneficiary only if the beneficiary is a surviving spouse, common-law partner or dependent child or grandchild. (In this report, common-law partner has the meaning given to that term in the *Income Tax Act*.) A third option is to enact that the RRSP, RRIF or DPSP remains an asset of the estate, but is exempt from attachment by creditors of the deceased planholder. The fourth option is similar to the third option, but the exemption would arise only if the designated beneficiary (or recipient of the plan) is the surviving spouse, common-law partner or dependent child or grandchild.

If RRSPs, RRIFs and DPSPs are to be treated identically to pensions, all benefits paid from the plans upon death of the planholder to someone other than the estate would be exempt from attachment by creditors of the deceased planholder. This could be accomplished using either option 1 or option 3. We do not, however, recommend these approaches because of the problems that arise in the administration of estates due to the taxation of RRSPs and RRIFs. In our

opinion, there is an inherent unfairness in giving the moneys in the RRSP, RRIF or DPSP to an individual and leaving the tax liability with the estate which no longer has the asset that triggered the liability. Therefore, we prefer a system where the protection arises in those situations in which the moneys may be transferred on a tax-deferred basis to the designated beneficiary. This will ensure that RRSPs, RRIFs and DPSPs pass to the surviving spouse, common-law partner or financially dependent child or grandchild of the deceased planholder free of claims of creditors. This serves the fundamental policy of ensuring that RRSPs, RRIFs and DPSPs are available for the retirement of the planholder and his or her dependants. At the same time, it minimizes the situations in which the tax liability triggered by the RRSP, RRIF or DPSP remains with the estate, but the asset itself does not.

This brings the choice down to option 2 and 4. In our opinion, option 2 creates the necessary protection, certainty, and desirable flexibility that are needed in the context of death of a planholder. Where a surviving spouse, common-law partner or financially dependent child or grandchild is designated, any benefit payable under the RRSP, RRIF or DPSP upon death of planholder should not form part of the estate of the deceased planholder and should not be subject to claims of the creditors of the deceased planholder. In all other situations, the benefit paid upon death of the planholder from a RRSP, RRIF or DPSP should remain an asset of the estate and be available for satisfaction of creditors of the deceased planholder. This will provide a clear and simple rule for the protection of RRSPs, RRIFs and DPSPs from creditors and will eliminate the complexity in the administration of estates that comes with option 4. While option 2 does remove the asset from the estate and thereby ensures that that asset is not available to satisfy an order under the *Dependants Relief Act*, this will only occur when a dependant receives the moneys from the RRSP, RRIF or DPSP. This minimizes one of the disadvantages of this model but still creates the creditor protection that is needed for RRSPs, RRIFs and DPSPs. Should a charity be the designated beneficiary of the plan, the plan would remain an asset of the estate and would be available for payment of creditors and for satisfaction of any order granted under the *Dependants Relief Act*.

Creating creditor protection based on the existence of a beneficiary designation for a RRSP, RRIF or DPSP will work well except in the context of LIRAs, LIFs and LRIFs. As discussed in Chapter 2, one of the distinguishing features of LIRAs, LIFs and LRIFs is the protection created for the surviving pension partner by pension legislation and the contract itself. So notwithstanding the fact that the planholder may have designated someone else, the pension partner will receive the LIRA, LIF or LRIF in certain situations. Protection of the surviving pension partner is a key component of Alberta pension legislation and should continue. A surviving pension partner should receive the benefit of the LIRA, LIF or LRIF free from claims of the creditors of the deceased planholder. Protection tied to the existence of a beneficiary designation in favour of a surviving spouse, common-law partner or dependent child or grandchild is insufficient to create the protection needed for pension partners. Pension partners are protected by pension legislation by reason of their status, and not by reason of the existence of a beneficiary designation. Therefore, we propose that whenever a pension partner receives a benefit under a LIRA, LIF or LRIF upon death of the planholder, the benefit should not form part of the estate of the deceased planholder and should not be available for payment of creditors of the deceased planholder. The benefit should vest in the pension partner notwithstanding the existence of a beneficiary designation in favour of another. This should not create a taxation problem for the estate because all pension partners will be entitled to defer payment of tax under the *Income Tax Act*, as they will fall into the definition of surviving spouse or common-law partner found in the *Income Tax Act*. The definitions used in the *Income Tax Act* are broader than the definition of pension partner used in the *Employment Pension Plans Act* ('EPPA') and the regulations under the *Public Sector Pension Plans Act* ('PSPPA').

In the situations in which there is no surviving pension partner, the LIRA, LIF or LRIF is paid to the designated beneficiary, if any. In these situations, the benefit should not form part of the estate of the deceased planholder when the designated beneficiary is the surviving spouse, common-law partner or financially dependent child or grandchild of the deceased employee. It is necessary to include surviving spouses and common-law partners in this context because, while most surviving spouses and common-law partners will also be pension partners, this is

not always the case. Two examples will illustrate the difference between the definitions. First, married persons who have lived separate and apart for more than three years would not be pension partners as defined in the EPPA but would be considered spouses under the *Income Tax Act*. All married persons who cohabit would be pension partners as defined in the EPPA and the regulations under the PSPPA. Second, a conjugal couple that cohabits for one year would be a common-law partner under the *Income Tax Act*, but would not be pension partners under the EPPA until they had cohabited for three years or there was a child of the relationship by birth or adoption.

In all other situations, the LIRA, LIF and LRIF will remain an asset of the estate and be available for satisfaction of creditors of the deceased planholder. For example, a LIRA, LIF or LRIF that is payable to the estate or to a designated beneficiary that is a charity or sibling will be available for satisfaction of creditors of the deceased planholder.

We recommend that the proposed legislation be found in the Trustee Act and apply notwithstanding any other act or law. This would restrict the protection that now exists for insurance RRSPs and RRIFs under section 580 of the *Insurance Act* and LIRAs, LIFs and LRIFs under pension legislation.

In Chapter 4, we examine whether RRSPs, RRIFs and DPSPs should be exempt from attachment by creditors of the designated beneficiary. We conclude that upon death of the planholder, the RRSP, RRIF or DPSP and the obligation to pay moneys from such plans should be exempt from all remedies of judgment creditors of a designated beneficiary who is a surviving spouse, common-law partner or dependent child or grandchild. Additional protection is not needed in the situation in which the fund is collapsed and moneys are received by the designated beneficiary.

Final Report No. 93
Family Law Project – The Conclusion

ALRI issued Final Report No. 93 in June 2004. This report marks the conclusion of the Family Law Project which spanned more than a decade. In the report, we highlight significant stages and events in the Project, culminating with the enactment of the Alberta *Family Law Act*, S.A. 2003, c. F-4.5. This Act received royal assent on December 4, 2003 and will come into force on a date yet to be proclaimed.

The Family Law Project began in the early 1990s, although family law topics have comprised a part of ALRI's program almost since our inception. We recognized that many of the statutory provisions governing private family law relationships, rights and obligations in Alberta embodied outdated concepts and terms. Alberta family law statutes had grown in a piecemeal fashion over many years, resulting in the fragmented treatment of family law legislation, as well as overlap and inconsistencies among the provisions contained in the existing family law statutes. Family law jurisdiction was spread among the Court of Queen's Bench, the Provincial Court (Family Division) and, to a lesser extent, the Surrogate Court; different statutory provisions applied from one court to another; and differences existed in the rights recognized, remedies available and procedures followed. Differences in federal and provincial family law caused awkwardness and confusion for family members who asked the courts to help sort out their rights and obligations.

The *Family Law Act* responds to these concerns. It is composed of five introductory sections, followed by seven Parts. In matters involving children, it permits the court to make orders:

- establishing parentage;
- appointing a guardian of the child's person;
- appointing a trustee of the child's property;
- allocating parenting powers, responsibilities and entitlements;
- permitting contact between a child and a person other than a guardian;

- enforcing a parenting order or order permitting contact with the child; and
- requiring the payment of child support.

In matters involving spouses or adult interdependent partners, the Act permits the court to make an order requiring the payment of support where the relationship has broken down.

With respect to these orders, the *Act* specifies:

- the persons who may apply for the order;
- the persons who are entitled to notice of the application (in the case of parentage and guardianship orders);
- the persons whose consent to the order is required, including the consent of a child 12 years of age or older to a change or termination of guardianship or an order of trusteeship (but subject to the power of the court to dispense with the consent requirement);
- the matters that may be dealt with in the order;
- the terms, conditions and restrictions which the court may impose;
- the circumstances in which the order may be varied; and
- the length of time for which the order endures or when it terminates.

Many of the provisions in the *Family Law Act* carry out recommendations we have made in a number of publications, most notably:

- Report No. 65, entitled *The Domestic Relations Act (DRA), Phase 1 – Family Relationships: Obsolete Actions, issued* in March 1993;
- the boxed set of four Reports for Discussion we issued in October 1998; and
- our response to the Alberta Justice public consultation launched in January 2002 with the publication of two Workbooks, one for public attention and one for technical consideration.

In Report No. 65, we recommended the abolition of certain obsolete actions having to do with family relationships. In the boxed set of Reports for Discussion Nos. 18.1-18.4, we made recommendations with respect to spousal support, child support and child guardianship, custody and access. In our response to the Alberta

Justice Workbooks, we reviewed our previous recommendations and were gratified to see Alberta Justice proposed the adoption of many – indeed, the majority – of our recommendations. Where the views of Alberta Justice differed from those set out in our publications, we revisited the issues. In some cases, we revised our position on the basis of information garnered through consultation and intervening occurrences such as a change in societal attitudes, the advent of new and emerging issues, or issues which were not within ALRI's consideration when we provided our previous recommendations. Appendix C to Final Report No. 93 contains a compendium in which we note selectively the impact of our recommendations on specific provisions in the *Family Law Act*. All of our documents are available to view or download at the ALRI website: *http://www.law.ualberta.ca/alri/*.

Some of the provisions in the *Family Law Act* cover areas that ALRI did not address. These are, we think, provisions which belong in a contemporary statute governing private family law relationships, rights and obligations. In short, in our view, the *Family Law Act* is well-reasoned, strikes a good balance in the interplay between different family law elements and is attuned to the 21st century.

We commend the government of Alberta on the enactment of the *Family Law Act*, S.A. 2003, c. F-4.5, and for the plain language drafting. In our view, it is a statute that will serve Albertans well.

Rules of Court Project

Consultation Memorandum No. 12.6
Promoting Early Resolution of Disputes by Settlement

A. Introduction

This consultation memorandum (CM 12.6) explores ways of promoting the resolution of disputes by settlement at the earliest appropriate opportunity given the nature of the dispute. Promoting the resolution of disputes more quickly by

adjudication falls to the Committee on the Management of Litigation (*see* ALRI CM 12.5). Of course, responsibility for the decision to settle a dispute lies with the persons in dispute (the parties), but the civil justice system can play a role by encouraging, or even requiring, the use of processes that hold the potential to eliminate the need to commence or continue litigation.

Only a few of the existing rules are specifically designed to promote the early settlement of disputes (*e.g.*, the formal settlement rules found in Part 12 of the Alberta Rules of Court). Therefore, of necessity, CM 12.6 differs in flavour from those CMs that deal with a known body of rules.

B. Impetus for Change

As a matter of process, greater emphasis is being placed on settlement now than in the past (although the goal of settlement is by no means new to litigation). Programs and services formerly provided only in the private sector are now being annexed to the court, or even offered by the court as part of its service (*e.g.*, judicial dispute resolution in which judges employ ADR techniques in sessions such as judicial mini-trials, early neutral evaluation or settlement conferences). The trend is observed and promoted in the Canadian Bar Association's Report of the *Task Force on Systems of Civil Justice* (CBA Task Force Report) issued in August 1996. Across Canada, government and courts are integrating a variety of innovative dispute resolution techniques with litigation. The Committee on Promoting Early Dispute Resolution (EDR Committee) anticipates that the trend in this direction will continue.

C. Five Core Premises

The EDR Committee's recommendations are built around five core premises (*see* chapter 1). These premises recognize that litigants, the courts and the public all have an interest in, and should strive for, early dispute resolution in order to make economical use of both private and public resources, save costs, increase litigant satisfaction with the process and results, and enhance overall respect for the administration of justice. The resolution of disputes by settlement between the parties is generally preferable to resolution imposed by court adjudication. However, adjudication may be required to satisfy the interest of the public in the

establishment and maintenance of standards for behaviour, the interest of the court in performing its constitutional role in this regard, the interest of the public and the court in making economical use of public resources by moving the litigation along and the interest of the parties in concluding the dispute.

D. Early Settlement Measures

CM 12.6 seeks opinions about what modifications, if any, the civil justice system should make to the existing settlement measures and what settlement measures could usefully be added. Chapter 2 identifies seven early settlement measures that are, or could be, linked to litigation.

Because settlement opportunities do not depend on litigation, but are present from the beginning of a dispute, CM 12.6 explores ways the Alberta Rules of Court (ARC) could promote settlement with a view to averting litigation. Three settlement measures discussed hold potential to promote settlement prior to the commencement of court action:

Party obligation to consider settlement. The EDR Committee recommends that the rules should "impose on all litigants a positive, early and continuing obligation to canvass settlement possibilities and to consider opportunities available to them to participate in non-binding dispute resolution processes" (*see* CBA Task Force Report at 33).

Counsel obligation to pursue settlement. The EDR Committee recommends that the lawyer's obligation to pursue settlement, now embodied in the Law Society of Alberta's *Code of Professional Conduct*, be incorporated into the rules.

Pre-action requirements. Possible pre-action requirements include compelling parties to take part in civil mediation (non-binding ADR) as a condition of using the litigation system, or expecting parties to comply with protocols designed for use in designated types of action, with case management or costs consequences if proceedings are later commenced. The EDR Committee rejects the first possibility. It seeks comments from the legal profession on the merit of the second possibility, that is, introducing pre-action protocols.

The remaining four measures identified become available after an action has been commenced. They are:

Action protocols. The EDR Committee invites comments from the legal profession about introducing action protocols which build on the concept of pre-action protocols but postpone their operation until after an action has been commenced. Action protocols would operate as incentives or expectations as to good practice to govern what happens in an action after the pleadings are filed.

Formal settlement rules. These rules are found in ARC, Part 12 on "Compromise Using Court Process." The EDR Committee recommends the retention, perhaps with modifications, of the formal settlement rules. Issues relating to the reform of these rules will be discussed in detail in a future CM.

Court-annexed ADR. Three current projects are described (*see* chapter 4). The EDR Committee applauds Alberta Justice and the Court of Queen's Bench for the initiatives they are taking in this direction, and encourages the piloting of innovative, formally evaluated programs. It does not make recommendations for the addition of any particular programs.

Judicial facilitation of settlement. The judicial role in facilitating dispute resolution through settlement has become an integral part of dispute resolution in the Alberta civil justice system (*see* chapter 5). The EDR Committee supports its retention. After examining issues relating to several features of judicial dispute resolution, the EDR Committee asks whether the judicial role should continue to be openly flexible as it is now, or whether the central features should be specified in Rules of Court or practice notes or by statute.

E. Ties With Significant Litigation Events

CM 12.6 explores the question whether any of the settlement measures described should be tied to any particular litigation event or events (*see* chapter 3). It identifies existing or prospective ties with six litigation events: commencement of the action; close of pleadings; filing the affidavits of records; close of discoveries; exchange of expert reports; and filing of certificate of readiness.

After identifying these ties, CM 12.6 poses five reform options: building settlement discussions into the litigation process; sharing information before, or shortly after, commencement of an action; building judicial conferences to explore settlement into the litigation process; making participation in a non-binding dispute resolution process a prerequisite to the next step in litigation; or choosing from a menu of settlement options.

The EDR Committee takes the view that the civil justice system should focus the attention of litigants and counsel on the possibilities of settlement early in the dispute and successively thereafter, as meaningful opportunities present themselves in the litigation process. While it may be desirable to mandate a discussion of settlement possibilities at specific points in the litigation process, the only stage by which the EDR Committee would require the parties to have utilized a settlement measure is before filing a certificate of readiness for trial in order to obtain a trial date. By this time, we would expect the parties to have used at least one settlement measure from a menu of settlement options, built on existing or currently proposed choices. Litigants would be able to be exempted from the requirement in appropriate cases.

The choice of this reform option is based on the Committee's belief that flexibility of approach is desirable and that cases should be looked at on an individual basis from the perspective of their particular facts. It encourages parties and counsel to give serious consideration to the measures available to promote settlement and to use them wisely. The menu could include: civil mediation in a court-annexed program (as proposed by the Alberta Justice Working Committee on Court-annexed Mediation in Civil Matters), settlement facilitation by a judge (judicial ADR) or court-appointed specialist (e.g., Dispute Resolution Officer), use of a private sector ADR process, or service of compromise using court process (if service of compromise does not lead to a settlement, the parties should select one of the other settlement measures on the menu).

The promotion of early dispute resolution by any of the measures discussed should not have the effect of undermining the quality of justice or public confidence in the system.

Consultation Memorandum No. 12.7
Discovery and Evidence Issues: Commission Evidence, Admissions, Pierringer Agreements and Innovative Procedures

A. Introduction

The Discovery and Evidence Committee ("the Committee") has been struck to consider specific issues in the areas of discovery and evidence. This consultation memorandum deals with a number of matters, including commission evidence and *de bene esse* evidence, admissions, discovery issues arising from the use of Pierringer agreements, and innovative discovery procedures.

B. Commission and *De Bene Esse* Evidence

The rules governing the procedure for taking evidence out of court to be used at trial are found in Part 26 of the Rules of Court, in Rules 270-291 and 297. These rules primarily concern commission evidence, the procedure to take evidence of a witness either inside or outside of Alberta if it appears that the witness will not be in the jurisdiction at the time of trial. They also give the court jurisdiction to order trial evidence to be taken *de bene esse* in situations where it appears that the witness may not be able to appear at trial due to death, or future physical or mental disabilities.

We received few comments from the profession about the commission evidence procedure. The comments we did receive concurred that the rules were outdated and poorly organized. In particular, it was noted that as the commission evidence rules are not very useful, parties often agree to their own procedures for taking commission evidence.

The Committee proposes that the commission evidence rules follow the Ontario model. The rules should set out the circumstances in which evidence can be taken by commission and the factors the court should take into account, including:

(a) the convenience of the person sought to be examined;

(b) the possibility that the person will be unable to testify at trial due to death, infirmity or sickness;

(c) the possibility that the person will be beyond the jurisdiction of the court at the time of trial;

(d) expense;

(e) whether the witness should give evidence in person at trial; and

(f) any other relevant consideration.

The Committee agrees that the existing procedures for obtaining commission evidence are too complicated, and should be simplified. The order for commission evidence, and, if necessary, for a letter of request (currently referred to as *letters rogatory*) may be done by way of standard forms written in plain language. The order should attach a standard form summons to the witness, commission, and letter of request.

The summons to the witness should give clear information about the time, date, and place of the examination, as well as outlining what the witness must bring to the examination and the consequences of non-attendance. It should also set out the amount of conduct money and how it is calculated.

The commission should set out the responsibilities of the Commissioner, details about the commission, and the oaths to be taken by the different participants.

The letter of request[6] should include:

(i) details of the style of cause and jurisdiction of the action;

(ii) a statement that the court is convinced that it is necessary to examine a witness in the recipient court's jurisdiction;

(iii) details of the commission;

(iv) the specific request that the court cause the witness to attend the examination by whatever means are used in that jurisdiction; and

---

[6] The Committee believes that the term "letter of request" is preferable to "letters rogatory".

(v) a request that the commissioner be permitted to carry out the examination in accordance with the Alberta rules of civil procedure and evidence.

Rather than creating a "stand-alone" procedure as they now do, the commission evidence rules should incorporate examination for discovery procedure with necessary modifications. This would eliminate duplication and inconsistency in the rules.

In addition to trial evidence, the Committee proposes that the rules expressly provide for examinations for discovery out of the jurisdiction.

C. Use of Discovery Transcripts at Trial When A Witness is Unavailable

Currently Rule 214(3) provides that an examining party may apply to use discovery transcripts, either in whole or in part, at trial if the witness is unavailable. This rule may be relied on when a person who has been examined for discovery dies unexpectedly prior to trial.[7] But it may only be relied on by the examining party, not by the party on whose behalf the unavailable witness was examined. The rationale for this limitation is that the purpose and procedure for an examination for discovery are very different as compared with other cross-examinations. Since the examiner is normally entitled to choose what parts, if any, of the transcript to read in, the examiner may pose questions that would never be posed in cross-examination at trial. The examiner may also choose not to pose questions in certain areas so as not to reveal trial tactics, with the result that the examination transcript presents an incomplete version of the case.

Despite this, there is also a compelling argument that the discovery evidence may be the best or even the only available evidence, and that justice may be served by permitting its use. Therefore the rules in several other provinces provide that the court has the discretion to allow any party to read in some or all portions of the discovery of a witness in certain circumstances. These rules often prescribe factors that the court should take into account when exercising this discretion.

---

[7] *Paquin v. Gainers Inc.* (1989), 101 A.R. 290, 71 Alta. L.R. (2d) 74 (C.A.) [*Paquin*].

The Committee recognizes it may be desirable in certain circumstances to permit a non-examining party to use a discovery transcript at trial. However, it also had serious concerns that this could prejudice the examining party. The Committee proposes that the rules be amended to permit any party to read in a discovery transcript if the witness is unavailable, provided that the procedure is strictly limited and only used when necessary. The rule should make it clear that a high threshold must be met before a non-examining party may use the transcript.

D. Admissions

Under Rule 230 a party can request another party to make certain admissions of fact (Notice to Admit Facts). Rule 230.1 permits a party to call on another party to admit that a written opinion (usually an expert opinion) is correct (Notice to Admit Opinion). These rules are designed to save both time and cost. The requested admissions are deemed to be admitted unless, within 30 days after service of the Notice to Admit, the responding party denies specifically the matter for which an admission is requested with reasons for the denial. The responding party may also object on the ground that some or all of the requested admissions are privileged or irrelevant, or that the request is otherwise improper. Where a party refuses to make a requested admission that is subsequently proven at the trial, the cost of proving the matter is paid by the party who refused to make the admission, unless the court finds that the refusal was reasonable. The court may at any time allow any party to amend or withdraw any admission on such terms as may be just.

The Committee agreed that the objectives of the Notice to Admit are very important. Notwithstanding concerns about the perceived ineffectiveness of the current rule, the Committee believes that the Notice to Admit has the potential to be an effective tool. The Committee supports retaining the Notice to Admit, and making changes (addressed below) to increase its effectiveness.

The Committee proposes that parties should continue to be able to withdraw admissions, either by consent or by court order, as there may be good reason for doing so. The court's discretion to allow or deny a withdrawal should remain uncodified and flexible, to enable the court to deal with particular facts on a case by case basis.

The Committee considered whether all parties to an action should be served with the Notice to Admit and response. The Committee does not intend that all parties so served need respond; only the party to whom the Notice is directed need respond, and the admissions made or refused would be effective only as between the party who served the Notice and the responding party (absent any agreement to the contrary). Nonetheless, a majority of the Committee thought that all parties should receive a copy of any Notice and response for informational purposes. The Committee seeks comments from the legal profession on this point.

There was a concern with the current Rule 230(4) that directs the court to award costs of proving the fact for which an admission was sought and was not forthcoming. It can be very difficult to assess the cost of proving a particular fact. The Committee proposes that the rule be amended. Rather than imposing costs relating only to the proof of the subject fact, the rules should provide that the court can take the undue denial(s) into account generally when awarding costs (as is the present practice under Alberta's Rule 192).

The Committee also addressed admissions under Rule 192, which provides that once an affidavit of records is served, both the party on whose behalf the affidavit is made and the party upon whom the affidavit is served are deemed to admit that the records specified or referred to in the affidavit are authentic. Further, if a copy of a letter, memorandum or other message was sent, both parties are deemed to admit that the original was sent and received by the addressee. There is no deemed admission under the rule if the party upon whom the affidavit is served replies with a notice of objection or denies the matter in his or her pleadings. As noted above, the court may take a party's wrongful denial into account when awarding costs.

The Committee was concerned by the lack of a definition of "authenticity" of a record, particularly with respect to electronic records. The Committee was of the view that the elements comprising "authenticity" as set out in the rules of several other provinces (and that were in the Alberta rules prior to amendments in 1999) are appropriate with some minor modifications. The definition of

"authenticity" in the Rules for the purposes of deemed admissions regarding records should include the facts that:

(i) a record that is said to be an original was printed, written, signed or executed as it purports to have been;

(ii) a record that is said to be a copy is a true copy of the original, and that original was printed, written, signed or executed as it purports to have been; and

(iii) where the record is a copy of a letter, telegram, telecommunication, or other electronic communication, that the original in its entirety was sent as it purports to have been sent and received in its entirety by the person to whom it is addressed.

The Committee considered whether a deemed admissions rule regarding records should be retained. The alternative would be to remove the automatic admission after the service of the Affidavit of Records and require service of some form of Notice to Admit. The approach in some other jurisdictions is that admissions regarding documents come into effect only after service of a Notice to Admit Documents. Giving counsel the opportunity to review each record for which the admission is sought allows the lawyer to make meaningful decisions regarding the authenticity of a record. Having parties inspect records prior to deeming admissions also minimizes problems regarding electronic records. Parties can review versions of produced records, and confirm that particular emails and attachments were received. It may be that the courts would be more likely to enforce deemed admissions following a Notice to Admit, as the admissions are less likely to arise from inadvertence. The majority of the Committee supports amending the rules to include a form of "Notice to Admit Records."

E. Pierringer Agreements

Pierringer agreements permit some defendants to withdraw from an action leaving the remaining defendants responsible for only the loss they actually caused, with no joint liability. Common elements in Pierringer agreements include:

1. The plaintiff receives a payment from the settling defendant in full satisfaction of the plaintiff's claim against that defendant.

2. The settling defendant receives from the plaintiff a promise to discontinue proceedings, effectively removing the defendant from the action.
3. Subsequent amendments to the pleadings formally remove the settling defendant from the suit.
4. The plaintiff continues the action against the remaining defendants, who are only responsible for their several liability.

Pierringer agreements give rise to the following issues regarding the discovery process:

1. *If Pierringer agreements are entered into before document discovery or examination for discovery have been concluded, should there be some mechanism for permitting the non-settling parties to complete discovery?*

Prior to the decision in *Amoco Canada Petroleum Company Ltd. v. Propak Systems Ltd.*,[8] the accepted practice in Alberta was that the court would decide whether to keep settling defendants in an action by determining whether doing so would prejudice the non-settling defendants. In *Amoco*,[9] the Alberta Court of Appeal noted that it is difficult to balance the competing interests of encouraging early settlement and minimizing potential prejudice to non-settling parties. The Court commented that this balance is made even more difficult due to the lack of tools in the Rules of Court that could assist in balancing the competing interests, particularly in that the Rules do not permit discovery of non-parties. The problem is alleviated in jurisdictions where rules give the court discretion to order discovery of non-parties so as to address the potential prejudice to non-settling parties without rejecting the proposed settlement agreement.

In Consultation Memorandum 12.2 this Committee proposed that the rules should not permit discovery of non-parties who are mere witnesses. However, parties removed from an action by way of Pierringer agreements are different from mere witnesses as they are not strangers to the litigation. The Committee agrees

---

[8] (2001), 281 A.R. 185, 2001 ABCA 110 [*Amoco*].

[9] *Ibid.*

with the suggestion made in *Amoco*,[10] that the rules should give the court jurisdiction to make any order it sees fit regarding procedure when one or more parties is removed from an action by way of settlement, including an order permitting discovery of former parties.

2. *If Pierringer agreements are entered into after examinations for discovery, what use may be made of the settling parties' discovery transcripts?*

Another issue arises if a Pierringer agreement is entered into after the completion of some or all of the examination for discovery of the settling defendant. As noted above, a common provision in a Pierringer agreement requires the settling defendant to be removed from the action. Once removed from the action, the settling defendant will no longer be an "opposite party". Presumably Rule 214 would no longer apply; a settling defendant who had examined the non-settling party loses the right to use the settling defendant's discovery evidence at trial. The argument is that the non-settling defendants may be prejudiced in the defence of their case if they are denied the opportunity to use admissions in discovery which may assist the court in apportioning liability.

The Committee was of the view that the possible situations may be too varied and too complex to be dealt with specifically in the rules. A better solution is to deal with the situations on a case by case basis, pursuant to a general rule that gives the court discretion following a partial settlement to make procedural rulings that will do justice between the parties. A "shopping list" of options for the court may be included, such as examinations of former parties, reading in the discovery transcript of a settling party, costs orders, or any other relief that the Court deems fit.

F. Innovative Procedures

Witness lists and "will say" or witness statements

Several jurisdictions require parties to provide lists containing the names of witnesses as well as contact information. This is also a requirement in Rule 661(4)

---

[10] *Ibid.*

of Alberta's Streamlined Procedure. Comments received in our consultation suggest that the days of the surprise witness are past. If a surprise witness is tendered at trial, adjournments are commonly granted to allow the party taken by surprise to address the situation. Disclosing witness names ahead of trial may avoid such delays, and help to focus issues and facilitate settlement.

The idea of imposing a requirement to serve "will say" or witness statements was also explored. Such statements would contain a summary of the evidence that a witness is expected to give at trial. Witness statements are now used in other jurisdictions, including the Northwest Territories.

There was substantial agreement in the Committee that some witness information should be provided pre-trial. The Committee discussed the extent and timing of such information. One possibility is to require the provision of witnesses' names or statements at an early stage. A number of concerns were raised regarding such a requirement. Incomplete information prior to discoveries can make it difficult to know who potential witnesses are; disclosure may be perceived as or lead to an invasion of witnesses' privacy; and early disclosure "front-end loads" the litigation process, and in so doing may create costs that are ultimately unnecessary, and/or needlessly abrogate litigation privilege. Due to these concerns, the Committee does not support pre-discovery witness statements or witness lists.

The Committee proposes that a summary of the witness' expected evidence be served no less than 10 days prior to trial. The summary should contain names and contact information for all witnesses expected to be called, together with a brief summary of the evidence the witness is expected to give.

"Will ask" statements

As it may be difficult for a witness who is to be discovered to inform him/herself in some cases, counsel have suggested a method to assist a corporate officer or other witness that may be incorporated in the rules. A list of areas to be examined upon could be sent to the representative prior to discovery. The list need not contain specific questions; it need only indicate areas upon which the witness is expected to be informed. The purpose would be to make discoveries more

efficient. If the witness comes prepared to answer questions, undertakings could be minimized and further discoveries avoided.

While recognizing the potential value of this process, the Committee also recognized that it is not always necessary, and, if required in all cases, could add to the cost of litigation. Therefore the Committee reached a consensus that "will ask" statements should not be required. If counsel wish to use them they may be used by agreement or perhaps by order of the court in case management.

Consultation Memorandum No. 12.8
Pleadings

A. Fact Pleading

The system of "fact pleading" reflected in Alberta Rule 104 was adopted in the English *Judicature Act 1875*, replacing the earlier system of common law pleading. Under common law pleading, there had developed intricate sets of specialized rules for the various common law forms of action. The change to fact pleading was an effort to exclude "pleas of law, argument, reasons, theories, conclusions, and evidence," and thus shorten pleadings and clarify the issues between the parties. Under fact pleading "a party must plead all the material facts on which it intends to rely at the trial" and "no averment must be omitted which is essential to success." Fact pleading is today employed in all Canadian common law jurisdictions, and is the predominant approach to pleadings in all common law systems.

Fact pleading may be contrasted with the system of "notice pleading" employed in American federal courts and in a majority of state courts. The test of adequate pleading under a notice pleading system is whether the opposing party has been sufficiently notified of a claim or defence so as to meet it. There is no need to allege all required facts for every element of a claim or defence, only a basic understanding of the claim or defence needs to be communicated.

Notice pleading has been a controversial innovation. While some point to advantages in eliminating the technicalities and associated controversies of fact pleading, others argue that notice pleading does not impose meaningful limits on the discovery process.

On the issue of whether fact pleading should continue to be used in Alberta, the General Rewrite Committee reviewed the common criticisms of pleadings – they are too long, too general, misleading, and so forth. It concluded that a change to notice pleading was not warranted. The Committee members felt that problems with pleadings did not derive from the system of pleading or the rules, but from poor practice. In fact if the rules governing pleadings were followed, it is likely that pleadings would be more useful. Generally, the quality of pleadings depends on the lawyer' s skill and training, and on enforcement of the pleadings rules by the courts. Therefore, changes that would clarify the current rules, and facilitate lawyers in following the rules and courts in enforcing them, should be encouraged.

B. Certification of Pleadings

Many criticisms of pleadings focus on what may be characterized as misuse of the system, in which many possible claims or defences are raised as alternatives without any reasonable basis for many of the allegations. A possible response to this concern is to require some form of certification or verification of pleadings, indicating that the allegations in them are true or are reasonably believed to be true.

The Committee decided against having either the client or the lawyer certify the pleadings. There was concern that it would be impossible for a lawyer to verify a claim, or to advise his or her client regarding verification, at such an early stage in the proceedings. When drafting pleadings, the lawyer has only heard one side of the case. Both lawyer and client are entitled to hear the other side in discovery. Further, certification asks the lawyer to sit in judgment of the veracity of the client's case and that is not the lawyer's job. To the extent that certification is employed simply to control frivolous suits, it is unnecessary as every lawyer is already bound by professional obligations not to bring frivolous suits.

While the consensus of the Committee was against certification of pleadings, we would be interested in receiving the views of the Bar and Bench on this point.

C. Contents of Pleadings

Changes should be made to clarify the requirements of the rules and facilitate lawyers in complying with them and courts in enforcing them. One such change would be to list clearly the separate elements of Rule 104 together with other basic rules of pleading. The Committee favours the adoption of a rule setting out the basic principles of pleading, following the model of Queensland Rule 149.

1. Pleading Law/Specific Pleading

A basic characteristic of fact pleading is that facts, rather than causes of action or law, are to be pleaded. However, the rule is qualified, so that the statement in Rule 104 that a pleading shall contain 'only' material facts is misleading.

First, there is permission, although not a requirement, to plead law in Rule 112, which provides that a "party may by his pleading raise any point of law." Rule 112 is also capable of misleading, as it must be read in the context of Rule 104 - which states that one is only permitted to raise a point of law if the material facts to support it are pleaded. The Committee agreed that the need to plead supporting facts when pleading a conclusion of law or point of law should be made explicit in the rules.

The second qualification to the requirement to plead facts and not law is that issues of law sometimes must be specifically pleaded. Specific pleading is required wherever the failure to plead might take the opposite party by surprise. The rules contain examples of legal issues and supporting facts that must be specifically pleaded. The Committee favours bringing together and building on the examples of matters requiring specific pleading already found in the rules. Again, the Committee recommends following the model of the Queensland rules, and listing in one rule matters that currently require specific pleading in Alberta. What is intended is a change in the format of the rules, not in proper pleading.

2. Pleading Remedies

The Alberta rules do not impose clear requirements regarding the pleading of remedies. Nonetheless, the remedies sought in an action are usually specified in a "prayer for relief" at the conclusion of the pleading. This practice has the benefit of preventing surprise, by notifying the defendant of what the plaintiff is seeking to recover.

The Committee is of the view that remedies should be specifically pleaded, including:

(a) type of remedy sought, including type of damages;

(b) amount of damages; and

(c) for a claim for interest, the basis for the claim and the calculation of the interest should be specified.

The Committee proposes that the rules require a "claim" (rather than a "prayer") for relief, which includes these matters. However, the rules should also continue to provide that general and unpleaded relief may be granted. A recognition in the rules of the court's authority to grant such relief is consistent with the court's duty under s. 8 of the *Judicature Act*.

3. Particulars

Particulars are details specifying the nature of certain alleged facts. They provide a degree of specificity to the allegation, but do not reach the level of indicating how the allegations will be proved, which would require the pleading of evidence. The functions of particulars are to permit the other party to plead in response, to narrow issues for trial and to save time and expense in the trial process.

The Committee believes that the rules should continue to require particulars of the matters referred to in Rule 115, and that defamation should be added to this list.

An issue was raised regarding the pleading of mental states, particularly fraudulent intention, malice and bad faith. Ontario's rules require particulars of such allegations. The Committee proposes to adopt the Ontario approach. It was thought that requiring particulars would mean that these claims, which involve

serious attacks on integrity, would be more carefully considered by those making them and more effectively investigated by those subject to them.

With regard to the procedure for demanding further particulars, the Committee proposes that the rules make express provision for a demand for particulars, and require that a demand for particulars must precede the bringing of a motion for particulars.

The Committee reviewed the other subsidiary pleadings rules, in Alberta and elsewhere, and makes a number of proposals, including:

- no change in practice regarding alternative pleas, but Rules 111 and 110(2), which are related, should be brought together;
- repealing Rule 114 (notice) and Rule 106 (documents and conversations), as they are superfluous;
- retaining Rule 107 (presumptions of law) and Rule 108 (conditions precedent); and
- retaining Rule 110(1) (matters arising after action started), but eliminating the special amendment procedure.

D. Rules Applicable to Defences

Canadian rules vary as to whether silence in a pleading presumes a denial or an admission. A related issue is the permissibility of a "general denial" form of defence. Alberta presumes a denial (Rule 119), and permits "general denial" defences in most cases. The Committee proposes to retain Alberta's present approach. Silence should continue to constitute a denial. Further, the rules should continue to permit a general denial.

The Committee also reviewed the rules providing exceptions to Rule 119, and proposes:

- eliminating the exception to the general rule now found in Rules 124, 125 and 126 for actions on bills of exchange and money demands;
- retaining the exceptions now found in Rules 122 and 127, so that incorporation, representative status and the constitution of a partnership must be specifically denied;

- retaining the requirement for specific pleading of the illegality or insufficiency in law of a contract; and
- retaining the requirement for specific pleading of matters likely to cause surprise, together with a list of examples.

The early admission of undisputed facts advances the objective of identifying the real issues between the parties. The rules of most Canadian jurisdictions deal explicitly with the requirement to make admissions in pleadings. The Committee proposes to add to the pleadings rules an explicit duty to admit undisputed facts.

The review of other rules pertaining to defences led to a recommendation to repeal Rule 110(3) (confession of a defence) and retain Rule 92 (defence of tender).

E. Reply, Joinder of Issue and Close of Pleadings

The Committee proposes that filing of a joinder of issue should no longer be permitted, and that replies should be employed only to plead new matters or make admissions. Pleadings should close, as they do now, with the filing of a reply or the expiry of the time to file.

F. Formalities of Pleadings

The Committee makes several proposals relating to the formalities of pleadings and other documents, including:

- the rules should provide for use of a short style of cause on documents after the statement of claim or other originating document;
- notices on documents that are now found on the backer could appear in the document as the first paragraph after the style of cause and the backer eliminated – the Committee would be interested in receiving the views of the legal community: "Are there any backers for backers?"; and
- different concepts applied to the treatment of documents are confusing and unnecessary – the rules should speak simply of "filing" documents, rather than "issuing" an originating document, and "filing" other documents.

Consultation Memorandum No. 12.9
Joining Claims and Parties, Including Third Party Claims, Counterclaims, and Representative Actions

A. Introduction

This Consultation Memorandum covers a wide but inter-related range of subjects: Amendment of Pleadings (Chapter 1) (which includes amendments adding, deleting and substituting parties); Joinder of Claims and Consolidation of Actions (Chapter 2); Joinder of Parties (Chapters 3 and 4); Third Party Claims (Chapter 5); Counterclaims (Chapter 6); and Representative Actions (Chapter 7). It organizes discussion under 43 issues distilled from research, consultation and the experience and views of the General Rewrite Committee.

The Consultation Memorandum sets out the initial views of the General Rewrite Committee, but it does so for the purpose of inviting comment and discussion, which will be considered and taken into account before final recommendations are formulated and put into the form of a set of draft Rules of Court.

B. Amendment of Pleadings

Consultation Memorandum 12.8, *Pleadings*, dealt with the general subject of the form and content of pleadings. This Consultation Memorandum builds on that previous work and goes on to discuss the general subject of amendments.

With respect to amendments by one party, the Committee proposes that

- there be no limit on the number of amendments a party may make to a pleading without leave of the Court, instead of the present limit of one. However, amendments without leave should be possible only before the close of pleadings.
- amendments adding, deleting or substituting parties continue to be possible without leave.

- consequential amendments by the other side should be made within 10 days and should be limited to responding to matters raised by the original amendment.

The Committee considers the Court's present broad discretionary power to allow a party to amend pleadings at any time, as interpreted by the case law, to be satisfactory. It proposes that the court should not have a unilateral power to amend pleadings, as it now does under Rule 133, and that references to amending "proceedings" should be deleted.

Other than proposing that the language of the Rules be simplified, the Committee does not propose any change in the form and method of making amendments, time for delivery of an amended pleading, amendments at trial, amendment of a record other than a pleading, or costs.

C. Joinder of Claims and Consolidation of Actions

Apart from proposals for appropriate form and terminology of the Rules relating to joinder of claims and consolidation of actions, the Committee proposes that:

- some current restrictions should be removed so that all parties will be allowed to sue in different capacities in one action, in which case a party suing in different capacities would be treated as multiple parties.
- the court would have power to order one proceeding to be made a counterclaim in another proceeding.
- a trial judge be given power to reverse or vary a chambers judge's order for concurrent or consecutive hearings.

D. Joinder of Parties

The Committee proposes that

- there be a single rule for the joinder of plaintiffs and for the joinder of defendants, under which it would be enough to satisfy one of the factors listed in an expanded rule, rather than having to satisfy all of them as is necessary under Rule 46.

- there be a single rule giving relief against joinder of parties or claims on grounds the joinder will cause undue complication, delay or prejudice, with an expanded list of remedies.
- the court have a clear, open-ended discretion to add, delete and substitute parties where necessary without causing prejudice.
- the substance of Rules 51 (appointment of a representative for an unborn, unascertained or missing non-party) and Rule 53 (order making a settlement binding on an absent person) should be retained, but the application of the two rules should be made co-extensive, so that the successor to Rule 53 will apply to the interpretation of documents as well as to proceedings concerning estates and trusts.
- the specific provisions in Rules 48, 49 and 52 be left to general rules.
- the provisions of Rules 54, 55 and 56 preventing the abatement of claims should be replaced by a general provision that a proceeding is not terminated only by reason that any estate, interest or title is transferred or transmitted (a) by reason of death where the cause of action survives, (b) by assignment or conveyance, or (c) by the operation of law. An order of the court should be required to continue the proceeding.

E. Third Party Claims

Rule 66(4) presently restricts third party claims to claims that a third party may be liable to a defendant for all or part of the plaintiff's claim against the defendant. The Committee thinks that Rule 66(4) is unduly restrictive. Given the usefulness of third party procedure as a means of consolidating actions, the Committee proposes that a defendant should be able to advance an independent claim under third party procedure if the claim is sufficiently related to the main action. The Committee points to an Ontario rule which permits not only a claim over, but also an independent claim arising out of a transaction or occurrence involved in the main action or out of a related transaction or occurrence, or out of a series of such transactions or occurrences.

Otherwise, the Committee proposes that, in general, the substance of the rules relating to third party claims should be retained, though with a considerable amount of re-drafting and tidying up, and with the dropping of provisions of

specific application that are better left to general rules. On one question, whether a limitation period on a claim for contribution may trap a defendant who is served at a late stage with a statement of claim, the Committee thinks that the question should be left to the *Limitations Act* and, that, if the question causes a problem, the problem should be resolved by an amendment to that Act.

F. Counterclaims

The Committee makes recommendations for improved drafting and organization of the rules. It proposes that, with respect to time for defence, new defendants by counterclaim should be governed by the same rules as other defendants, and that, with respect to other pleadings, the time be set at a consistent 10 days.

G. Representative Actions

Rule 42 provides that "where numerous persons have a common interest in the subject of an intended action, one or more of those persons may sue or be sued or may be authorized by the Court to defend on behalf of or for the benefit of all." The *Class Proceedings Act*, which was enacted in 2003, provides for the bringing of an action by a representative plaintiff or plaintiffs on behalf of a class of persons who share an issue in common against a defendant or defendants.

The Committee proposes that Rule 42 be abolished with respect to plaintiff classes because it will not be needed for those classes once the enactment of the *Class Proceedings Act* is proclaimed. The Act was enacted to overcome the problems of the representative action rule, and the Committee is of the view that procedures under the Act can be tailored to suit simpler cases as well as more complex ones. However, the substance of the rule should be retained for defendant classes, which are not provided for in the Act, though the successor rule should be redrafted in more modern language.

Creditor Access to Future Income Plans

We have now completed Final Reports No. 91 and 92 on the general topic of exemption of future income plans. We split the topic into two, one dealing generally with exemption during life, and the second dealing with the incidence of these plans on the death of the planholder. The first report deals with exemption generally and provides draft legislation for amendments to the *Civil Enforcement Act*.

The report recognizes the growing incidence of future income plans, both as a substitute for private pension plans and as a complement to public pension plans. It suggests that as long as the plans retain their status as a saving for retirement, that the assets of the plan be exempt from creditor access. These proposals also eliminate one very significant anomaly, i.e., the differential treatment of plans issued by insurance companies as opposed to banks. In the current law, insurance plans are exempt from creditor access, whereas future income plans issued by banks are not. The product is essentially the same from both sources and the inconsistency of treatment cannot be justified. We follow the general proposals into the situation of the death of the planholder and propose amendments to the *Trustee Act*. Essentially we recommend that a plan which prior to the death of the planholder was exempt from future assets, should remain exempt if it goes into the hands of family members to whom a tax deferred rollover could have taken place, and if there is a designation of such a family member as a beneficiary of the plan.

E-Commerce

The Institute has continued its involvement in this area, through the work of the Director on two fronts. The Director is a member of working groups of the Uniform Law Conference of Canada on internet sales protocols and jurisdiction in internet sales transactions. The working groups have produced draft uniform legislation and the Director will continue to work through the auspices of the Department of Government Services for implementation of this legislation.

Enduring Powers of Attorney

We published Final Report No. 88 in February 2003 on the question of whether or not additional formalities should be legislated to protect against abuse of enduring powers of attorney. Apart from the legal formalities, there are also questions as to the general practices which should be followed by attorneys and the understanding of those practices by family members who are affected by the exercise of enduring powers of attorney. It was this area that we decided to highlight in the joint western Canada project on possible areas for reform. The consultation memorandum actually covers three areas – the first dealing with facilitating recognition of the document, and the second and third dealing with the practicalities of use and acceptance of the document under the headings of clarifying the duties of attorneys and clarifying issues for persons interacting with attorneys.

We have prepared and distributed the consultation paper in each of the four provinces and are consulting separately and will pool the results of that consultation late this year.

Marshalling Rules

We dealt with the general question of order of application of assets and satisfaction of debts and liabilities in Report for Discussion No. 19 issued in September 2001. Rather than issue a separate final report on this discrete topic, we determined that it should be dealt with as part of the final report on our succession rationalization project. This report is currently assigned to our counsel, Debra Hathaway, who turns to that topic when she has time available from her other activities in the Rules Project. For the moment, we still anticipate that any window for legislation in the succession area will not open until at least 2006.

Matrimonial Property Act

Preliminary consultation with the family law bar was undertaken to determine whether there are issues with the legislation that should be addressed. The legislation is now almost 30 years old and significant changes have occurred in the surrounding context. While there are several issues that might require some adjustment, one practical problem that requires more immediate attention is the timing of valuation. We will deal with this issue as a discrete topic.

Rules of Court

This project is moving into the final phases. We expect almost all of the consultation on memoranda to have been completed by the end of 2004, with all the policy decisions in place shortly thereafter.

Drafting has commenced in the areas in which consultation has been completed, final recommendations given, and drafting instructions prepared.

In the 2003-2004 year the Rewrite and Rethink Committees published Consultation Memoranda 12.6 to 12.9. Executive summaries for these are included with this report. The following is a chart setting out the status of the various working group publications.

No.	Title	Date of Issue	Date for Comments	Drafting Instructions
12.1	Commencement of Proceedings in Queen's Bench	October 2002	January 31, 2003	complete
12.2	Document Discovery and Examination for Discovery	October 2002	January 31, 2003	complete
12.3	Expert Evidence and "Independent" Medical Examinations	February 2003	May 16, 2003	complete

No.	Title	Date of Issue	Date for Comments	Drafting Instructions
12.4	Parties	February 2003	June 2, 2003	complete
12.5	Management of Litigation	March 2003	June 30, 2003	in progress
12.6	Promoting Early Resolution of Disputes by Settlement	July 2003	November 14, 2003	in progress
12.7	Discovery and Evidence Issues: Commission Evidence, Admissions, Pierringer Agreements and Innovative Procedures	July 2003	November 14, 2003	in progress
12.8	Pleadings	October 2003	January 31, 2004	complete
12.9	Joining Claims and Parties, Including Third Party Claims, Counterclaims and Representative Actions	February 2004	April 30, 2004	complete

Standardized Limitation Periods for Actions on Insurance Contracts

This topic has now been assumed by the Uniform Law Conference of Canada, and it is hoped that the issue can be discussed in conjunction with superintendents of insurance, on a country-wide basis. Implementation of Final Report No. 90 will await the outcome of that work.

Title Insurance

The Manitoba Law Reform Commission has received a reference from the provincial government relating to Title Insurance. The Manitoba reference is available on <http://www.gov.mb.ca/justice/mlrc/>. Since this topic has common issues across Torrens jurisdictions we have agreed to work on a cooperative project with the Law Reform Commissions of Manitoba and Saskatchewan.

The joint project has established a working committee with representatives from the profession and law reform counsel from each province. Manitoba has undertaken a preliminary round of consultation in order to prepare a draft consultation memorandum. Alberta and Saskatchewan will review the draft and adapt it for upcoming consultation in all three provinces.

Western Canadian Law Reform Agencies

ALRI took the initiative in inviting the four western law reform agencies to review whether there were areas that could profitably be dealt with on a four-province basis. As a result of that review, two projects were selected – Enduring Powers of Attorney in four provinces, and Title Insurance in three provinces (Manitoba, Saskatchewan, and Alberta).

Consultation Paper #1 is now under consideration and a consultation paper on title insurance will be released before year end. After the conclusion of consultation in each province, the results will be pooled and joint final recommendations produced.

ALRI's role has been to finance, with the help of the Alberta Law Foundation, the initial review and the communication costs of the two working groups. ALRI also prepares and publishes a hard copy and electronic versions of the consultation memoranda.

We hope that the two prototype projects will lead to further joint work.

Wills Act

As the next phase of the ongoing Succession Project, ALRI will review the *Wills Act* and make recommendations for reform of this important area of succession law. Virtually every aspect of the law of wills is to be examined, including issues

dealing with execution, revocation, alteration, interpretation, lapse, disclaimer, ademption, gifts over and residue. The management plan and work plan for this project have been approved by the Board. Research and preparation of recommendations will commence in late 2004.

It is impossible to summarize the year under review without recognizing the dominant role that the Alberta Rules of Court Project has played on our work, and the impact it has had on the other projects which ALRI has underway.

The Rules Project is reaching a crucial stage when we are coming into the last year and one half of the project, and every element of the project is now in play. We have some working groups which have completed their research and policy, put out their consultation memoranda and received consultation. On the basis of the consultation, they have reviewed their proposals and have now produced final proposals and drafting instructions for the preparation of the new rules in that subject areas. Others are completing the preparation of drafting instructions, while yet others are circulating the consultation memoranda for consultation.

In addition, we are beginning to identify some overarching areas, which the Steering Committee must deal with. The Steering Committee must also iron out any wrinkles which may occur if there are inconsistencies or difficulties between the recommendations of various working groups.

It is not surprising that the Rules Project has taken on this dominant role. It is the largest and most complex project we have undertaken, even more so than our work in the early 1980's on the *Business Corporations Act*, and our work in the late 1980's and early 1990's on the enforcement of money judgments.

To say that the project is large does not really allow the reader or participant to comprehend the different measures by which the project could be described as large. Under the supervision of the Board and the Steering Committee, the project has been broken down into working committees dealing with discrete subject areas. There are 11 working groups. So far these working groups have produced 13 formal consultation memoranda, and 8 public issues papers. They have met 114 times, usually for durations of 2 to 3 hours. The General Rewrite Committee, which has ongoing responsibility for any topic not specifically assigned to another working group has met 27 times over the two years since it was created. It has produced by itself, six consultation memoranda.

The research and writing component has involved all of our full time counsel, numbering five, as well as two other contract counsel. We have also employed four subject matter experts to work with various other working groups. With each of our full-time counsel spending at least 50% of their time on rules activity, the impact on our other projects and our capacity to take on other projects has been significant.

In addition, since the project has covered an extended period of time, one should expect some changes to occur within that period. It was with both delight and some consternation that we learned in late 2003 that our lead counsel, Professor June Ross was appointed to the Court of Queen's Bench. As lead counsel, Professor Ross had a major role in shaping the project, coordinating the research activity, and keeping the overall project on track. Fortunately, we were able to contract for additional services and time for two of our longstanding Board members and our lead counsel position was replaced with a triumvirate "lead council" consisting of Dr. W.H. Hurlburt, Q.C., Mr. Lyndon Irwin, Q.C., and the Director.

Once we go beyond the immediate Institute we can count a total of 78 volunteers actively working with the committees and working groups with the development of the new proposals.

A program of this size duration and complexity, demands a large degree of coordination. Our project management template now runs to 64 pages in length, and documents 754 tasks (and counting!) distributed among the various working groups and participants. Tracking the coordination and completion and documentation of each of these tasks is a challenge. Similarly, the periodic all-staff meetings to disclose and discuss progress have been essential. All of this activity has therefore forced us to focus on and review how efficiently we carry out certain activities, and we have paid close attention to the following tasks:

- the need to coordinate the research and writing activities of our counsel
- the logistics of meeting organization and distribution of materials
- the recording of discussion and policy decisions of the working committees for inclusion in subsequent consultation memoranda

- coordination of topics among the various working groups
- formatting and production process for hard copy and electronic distribution of consultation memoranda
- progress reporting to all stakeholders and interested parties
- the recording and integration of all feedback on consultation memoranda
- the budget control over the integrated financing of the three-plus year project

While the Rules Project was our dominant activity, we have still been able to carry on a reduced level of normal law reform business. During the year under review, we have produced three final reports, as well as a joint consultation paper prepared in conjunction with the four western provinces. In addition, we have provided formal advice on specific issues to government departments, and participated fully in the working groups of the Uniform Law Conference of Canada, and its commercial law strategy.

Since the Rules Project has a slightly chilling effect on our normal project selection, it has also provided us with the opportunity to determine what topics can be taken on with the resources that we can devote. Given that the Rules Project has lessened our capacity to take on other projects, assessing the priority between various projects becomes more crucial. We have also taken the time to review and refine our project selection process, including in particular, the question of how we ensure that we have the time and capacity to respond to requests for advice and assistance that do not fit within our normal cycle of project work.

The Rules Project is a long-term project which we have compressed into a relatively short three-year time frame. There is pressure from this time frame and the work can be a grind for all involved. Issues of motivation, recognition of contribution and ensuring that the end goal is always recognizable and achievable have been important elements in our ongoing activity.

Peter J.M. Lown, Q.C.
Director

	FINAL REPORTS	ENACTMENT
1*	Compensation for Victims of Crime (1968)	Criminal Injuries Compensation Act, S.A. 1969, c. 22 (now Victims of Crime Act, R.S.A. 2000, c. V-3).
2*	Powers of Personal Representatives to Grant Options (June 1969)	An Act to amend The Wills Act, 1960, S.A. 1970, c. 114 (now Wills Act, R.S.A. 2000, c. W-12, s. 30). An Act to amend The Devolution of Real Property Act, S.A. 1970, c. 114 (now Devolution of Real Property Act, R.S.A. 2000, c. D-12, s. 12).
3*	Occupiers' Liability (December 1969)	Occupiers' Liability Act, S.A. 1973, c. 79 (now R.S.A. 2000, c. O-4).
4*	Age of Majority (January 1970)	Age of Majority Act, S.A. 1971, c. 1 (now R.S.A. 2000, c. A-6).
5*	Guarantees Acknowledgment Act, R.S.A. 1970, c. 173 (October 1970)	Principal recommendation for retention of Guarantees Acknowledgment Act (now R.S.A. 2000, c. G-11) accepted. Recommendations for incidental amendments not acted upon.
6*	Rule Against Perpetuities (August 1971)	Perpetuities Act, S.A. 1972, c. 131 (now R.S.A. 2000, c. P-5).
7*	Joinder of Divorce Proceedings with other Causes of Action (August 1971)	Alberta Rules of Court, Rule 563(3), Alta. Reg. 315/71.
8*	Assignment of Wages (October 1971)	Wage Assignments Act, S.A. 1972, c. 61 (now Fair Trading Act, R.S.A. 2000, c. F-2).
9*	Rule in *Saunders* v. *Vautier* (February 1972)	The Attorney General Statutes Amendment Act, 1973, S.A. 1973, c. 13, s. 12 amending the Trustee Act (now R.S.A. 2000, c. T-8, s. 42).
10*	Powers of Maintenance and Advancement (June 1972)	The Attorney General Statutes Amendment Act, 1974 (No. 2), S.A. 1974, c. 65, s. 9 amending the Trustee Act (now R.S.A. 2000, c. T-8, ss. 32, 34, 35, 36(3), 37).

	FINAL REPORTS	ENACTMENT
11*	Common Promisor and Promisee: Conveyances with a Common Party (October 1972)	Common Parties Contracts and Conveyances Act, S.A. 1974, c. 20 (now Law of Property Act, R.S.A. 2000, c. L- 7, ss. 10-13; Land Titles Act, R.S.A. 2000, c. L-4, ss. 68, 69, 119).
12*	Expropriation (March 1973)	Expropriation Act, S.A. 1974, c. 27 (now R.S.A. 2000, c. E-13).
13*	Judicature Act, Section 24 (August 1974)	The Attorney General Statutes Amendment Act, 1974 (No. 2), S.A. 1974, c. 65, s. 9 striking out s. 24 of the Judicature Act, R.S.A. 1970, c. 193.
14	Minors' Contracts (January 1975)	
15*	Validity of Rules of Court (December 1974)	The Attorney General Statutes Amendment Act, 1976 (No. 2), S.A. 1976, c. 58, s. 6(4) amending the Judicature Act (now R.S.A. 2000, c. J-2, s. 63).
16*	Rule in *Hollington v. Hewthorn* (February 1975)	The Attorney General Statutes Amendment Act, 1976, S.A. 1976, c. 57, s. 1 amending the Alberta Evidence Act (now R.S.A. 2000, c. A-18, s. 26).
17*	Small Projects (June 1975)	The Workers' Compensation Amendment Act, 1976, S.A. 1976, c. 55, s. 2 (now Workers' Compensation Act, R.S.A. 2000, c. W-15, s. 20); The Attorney General Statutes Amendment Act, 1976 (No. 2), S.A. 1976, c. 58, s. 3 repealed the Bulk Sales Act, R.S.A. 1970, c. 37.
18*	Matrimonial Property (August 1975)	Matrimonial Property Act, S.A. 1978, c. 22 (now R.S.A. 2000, c. M-8), enacting a combination of the majority and minority proposals for the distribution of matrimonial property, and an extension of the recommendations on possession of the matrimonial home.
19*	Consent of Minors to Health Care (December 1975)	

	FINAL REPORTS	ENACTMENT
20*	Status of Children (June 1976)	Substantially enacted, pursuant to the recommendations in Report 60 by the Family and Domestic Relations Statutes Amendment Act, 1991, S.A. 1991, c. 11 amending the Domestic Relations Act (now R.S.A. 2000, c. D-14, ss. 50(1), 77-84); the Family Relief Act (now R.S.A. 2000, c. F-4, s. 1(b)); and the Intestate Succession Act (now R.S.A. 2000, c. I-10, s. 1(b)).
21*	Purchase by a Company of Shares Which It Has Issued (January 1977)	The Companies Amendment Act, 1977, S.A. 1977, c. 13, s. 2 (now Business Corporations Act, R.S.A. 2000, c. B-9, ss. 30 and 31).
22*	Residential Tenancies (February 1977)	Landlord and Tenant Act, 1979, S.A. 1979, c. 17 (now Residential Tenancies Act, R.S.A. 2000, c. R-17), based in large part on our recommendations.
23*	Partition and Sale (March 1977)	Partition and Sale Act, S.A. 1979, c. 59 (now Law of Property Act, R.S.A. 2000, c. L-7, ss. 14-19, 20-33).
24	Survival of Actions and Fatal Accidents Act Amendment (April 1977)	Survival of Actions Act, S.A. 1978, c. 35 (now R.S.A. 2000, c. S-27; Fatal Accidents Act, R.S.A. 2000, c. F-8, ss. 5(2)(a), (b), 8; and Limitation of Actions Act, R.S.A. 2000, c. L-12, s. 53).
25	Family Law Administration: the Unified Family Court (April 1978)	
26	Family Law Administration: Court Services (April 1978)	Some recommendations carried out by administrative action.

	FINAL REPORTS	ENACTMENT
27	Matrimonial Support (March 1978)	The Domestic Relations Amendment Act, 1977, S.A. 1977, c. 64 (now Maintenance Enforcement Act, R.S.A. 2000, c. M-1), establishing a collection service for support orders which is generally consistent with though different in detail from our recommendations, and providing improved collection procedures which are similar to but in several particulars more stringent than our proposals); The Social Development Amendment Act, 1977 (No. 2), S.A. 1977, c. 92 (now Social Development Act, R.S.A. 2000, c. S-12, ss .14, 15); The Consumer and Corporate Affairs Statutes Amendment Act, 1978, S.A. 1978, c. 49, s. 2 amending the Debtors' Assistance Act (now R.S.A. 2000, c. D-6, ss. 3(2), 3(3), 4(c)-(f), (6)). (Our proposals for change in the substantive law have not yet been implemented.)
28	Tenancies of Mobile Home Sites (April 1978)	Mobile Home Sites Tenancies Act, S.A. 1982, c. M-18.5 (now R.S.A. 2000, c. M-20).
29	Family Relief (June 1978)	
30*	The Builders' Lien Act: Certain Specific Problems (March 1979)	Builders' Lien Amendment Act, 1985, S.A. 1985, c. 14 (now Builders' Lien Act, R.S.A. 2000, c. B-7).
31	Contributory Negligence and Concurrent Wrongdoers (April 1979)	

	FINAL REPORTS	ENACTMENT
32	Guest Passenger Legislation (April 1979)	Proclamation 5 July 1979 of previously enacted The Alberta Insurance Amendment Act, 1977, S.A. 1977, c. 76, s. 6 (now Insurance Act, R.S.A. 2000, c. I-3, s. 310) (This is not the principal recommendation of the Report). Gratuitous Passengers and Interspousal Tort Immunity Statutes Amendment Act, S.A. 1990, c. 22, s. 1 amending the Highway Traffic Act (now R.S.A. 2000, c. H-8).
33	Inter-Spousal Tort Immunity (April 1979)	Gratuitous Passengers and Interspousal Tort Immunity Statutes Amendment Act, S.A. 1990, c. 22, s. 2 amending the Married Women's Act (now R.S.A. 2000, c. M-6, s. 2(3)) and s. 3 amending the Contributory Negligence Act (now R.S.A. 2000, c. C-27).
34*	Service of Documents During Postal Interruptions (June 1979)	The Service of Documents During Postal Interruptions Act, S.A. 1980, c. 88 (now Judicature Act, R.S.A. 2000, c. J-2, ss. 43-47).
35*	Defamation: Fair Comment and Letters to the Editor (October 1979)	The Defamation Amendment Act, 1980, S.A. 1980, c. 11 (now Defamation Act, R.S.A. 2000, c. D-7, s. 9).
36*	Proposals for a New Alberta Business Corporations Act (August 1980), 2 vols.	Business Corporations Act, S.A. 1981, c. B-15 (now R.S.A. 2000, c. B-9).
37A	The Uniform Evidence Act 1981: A Basis for Uniform Evidence Legislation (June 1982)	
37B	Evidence and Related Subjects: Specific Proposals for Alberta Legislation (June 1982)	
38	The Uniform Sale of Goods Act (October 1982)	
39	Defences to Provincial Charges (March 1984)	

	FINAL REPORTS	ENACTMENT
40	Judicial Review of Administrative Action: Application for Judicial Review (March 1984)	Court of Queen's Bench Amendment Act, 1987, S.A. 1987, c. 17 (now Court of Queen's Bench Act, R.S.A. 2000, c. C-31).
41	Compensation for Security Interests in Expropriated Land (May 1984)	
42	Debt Collection Practices (June 1984)	See generally, Civil Enforcement Act, S.A. 1994, c. C-10.5 (now R.S.A. 2000, c. C-15).
43	Protection of Children's Interests in Custody Disputes (October 1984)	
44	Statute of Frauds (June 1985)	
45*	Status of Children: Revised Report, 1985 (November 1985)	Substantially enacted, pursuant to the recommendations in Report 60 by the Family and Domestic Relations Statutes Amendment Act, 1991, S.A. 1991, c. 11 amending the Domestic Relations Act (now R.S.A. 2000, c. D-14, ss. 50(1), 77-84); the Family Relief Act (now R.S.A. 2000, c. F-4, s. 1(b)); and the Intestate Succession Act (now R.S.A. 2000, c. I-10, s. 1(b)).
46*	Trade Secrets (July 1986)	Draft statute adopted by Uniform Law Conference of Canada, Victoria, B.C., August 1987.
47	Survivorship (August 1986)	
48	Matrimonial Property: Division of Pension Benefits Upon Marriage Breakdown (June 1986)	
49	Proposals for a New Alberta Incorporated Associations Act (March 1987)	Bill 54 (Volunteer Incorporations Act) introduced into Alberta Legislature, June 15, 1987.

	FINAL REPORTS	ENACTMENT
50	Prejudgment Remedies for Unsecured Claimants (February 1988)	Civil Enforcement Act, S.A. 1994, c. C-10.5 (now R.S.A. 2000, c. C-15).
51	Proposals for a New Alberta Arbitration Act (October 1988)	Arbitration Act, S.A. 1991, c. A-43.1 (now R.S.A. 2000, c. A-43).
52	Competence and Human Reproduction (February 1989)	
53	Towards Reform of the Law Relating to Cohabitation Outside Marriage (June 1989)	
54	Financial Assistance by a Corporation: Section 42, The Business Corporations Act (Alberta) (August 1989)	Business Corporations Act, S.A. 2000, c. 10, s. 2 (now R.S.A. 2000, c. B-9, s. 45).
55	Limitations (December 1989)	Limitations Act, S.A. 1996, c. L-15.1 (now R.S.A. 2000, c. L-12).
56	The Bulk Sales Act (January 1990)	Miscellaneous Statutes Amendment Act, 1992, S.A. 1992, c. 21, s. 5 (repealed the Bulk Sales Act).
57	Section 16 of the Matrimonial Property Act (March 1990)	Miscellaneous Statutes Amendment Act, 1991, S.A. 1991, c. 21, s. 24 amending the Matrimonial Property Act (now R.S.A. 2000, c. M-8, s. 16).
58	Division of Canada Pension Plan Credits in Alberta (November 1990)	
59	Enduring Powers of Attorney (December 1990)	Powers of Attorney Act, S.A. 1991 c. P-13.5 (now R.S.A. 2000, c. P-20).
60	Status of Children: Revised Report, 1991 (March 1991)	Family and Domestic Relations Statutes Amendment Act, 1991, S.A. 1991, c. 11 amending the Domestic Relations Act (now R.S.A. 2000, c. D-14, ss. 50(1), 77-84); the Family Relief Act (now R.S.A. 2000, c. F-4, s. 1(b)); and the Intestate Succession Act (now R.S.A. 2000, c. I-10, s. 1(b)).

	FINAL REPORTS	ENACTMENT
61	Enforcement of Money Judgments, 2 Vols., (March 1991)	Civil Enforcement Act, S.A. 1994, c. C-10.5 (now R.S.A. 2000, c. C-15).
62	Proposals for the Reform of the Public Inquiries Act (November 1992)	
63	Section 195 of the Land Titles Act (February 1993)	Miscellaneous Statutes Amendment Act, 1994, S.A. 1994, c. 23, s. 26 amending the Land Titles Act (now R.S.A. 2000, c. L-4, s. 203).
64	Advance Directives and Substitute Decision–Making in Personal Health Care (March 1993) *(A Joint Report of the Alberta Law Reform Institute and the Health Law Institute)*	Personal Directives Act, S.A. 1996, c. P-4.03 (now R.S.A. 2000, c. P-6).
65	The Domestic Relations Act (DRA) – Phase 1. Family Relationships: Obsolete Actions (March 1993)	Family Law Act enacted as S.A. 2003, c. F-4.5. Net yet proclaimed.
66	Non-Pecuniary Damages in Wrongful Death Actions—A Review of Section 8 of the Fatal Accidents Act (May 1993)	Fatal Accidents Amendment Act, 1994, S.A. 1994, c.16 (now R.S.A. 2000, c. F-8).
67	Transfers of Investment Securities (June 1993)	
68	Beneficiary Designations: RRSPs, RRIFs and Section 47 of the Trustee Act (September 1993)	Miscellaneous Statutes Act, 1994, S.A. 1994, c. 23, s. 46 amending the Trustee Act (now R.S.A. 2000, c. T-8, ss. 8(b), 47(1)(c), 47(3), 47(4)).
69	Proposals for a Land Recording and Registration Act for Alberta, 2 Vols., (October 1993)	Principles adopted in the Metis Settlements Land Registry Regulation (AR 361/91).
70	Mortgage Remedies in Alberta (June 1994)	Law of Property Amendment Act, S.A. 2003, c. 24. (But not enacting our principal recommendations.)
71	The Presumption of Crown Immunity (July 1994)	

	FINAL REPORTS	ENACTMENT
72	Effect of Divorce on Wills (November 1994)	
73	Revision of the Surrogate Rules (Final Report) (May 1996)	The principal statutory amendments of Report for Discussion 10 anticipating the new rules were enacted in the Miscellaneous Statutes Amendment Act, 1992, c. 21, s. 47. The Rules and Forms were enacted by Alta. Reg. 130/95.
74	Protection Against Domestic Abuse (February 1997)	Protection Against Family Violence Act, S.A. 1998, c. P-19.2 (now R.S.A. 2000, c. P-27).
75	"Last Clear Chance" Rule (August 1997)	Justice Statutes Amendment Act, 2000, S.A. 2000, c. 20, s. 72 amending the Contributory Negligence Act (now R.S.A. 2000, c. C-27, s. 3).
76	Should a Claim for the Loss of a Chance of Future Earnings Survive Death? (December 1998)	Justice Statutes Amendment Act, 2002, c. 17, s. 8 amending the Survival of Actions Act (now R.S.A. 2000, c. S-27, s. 5).
77	Limited Liability Partnerships (April 1999)	Partnership Amendment Act, S.A. 1999, c. 27 (now R.S.A. 2000, c. P-3).
78	Reform of the Intestate Succession Act (June 1999)	
79	Powers and Procedures for Administrative Tribunals in Alberta (December 1999)	
80	Trustee Investment Powers (February 2000)	Trustee Amendment Act, S.A. 2001, c. 28.
81	Occupiers' Liability: Recreational Use of Land (February 2000)	Occupiers' Liability Act amended by S.A. 2003, c. 45, s. 2, proclaimed May 1, 2004
82	Cost of Credit Disclosure (February 2000)	Insurance Act, S.A. 1999, c. I-5.1, s. 855 and Miscellaneous Statutes Amendment Act, 1999, S.A. 1999, c. 26, s. 8 amending the Fair Trading Act (now R.S.A. 2000, c. F-2, Part 9, s. 66 and 69).

	FINAL REPORTS	ENACTMENT
83	Division of Matrimonial Property on Death (May 2000)	
84	Wills: Non-Compliance with Formalities (June 2000)	
85	Class Actions (December 2000)	Class Proceedings Act, S.A. 2003, c. C-16.5 proclaimed April 1, 2004.
86	Non-Resident Trustees under the Dependent Adults Act (January 2002)	
87	Report on a Succession Consolidation Statute (December 2002)	
88	Enduring Powers of Attorney: Safeguards Against Abuse (February 2003)	
89	Limitations Act – Adverse Possession and Lasting Improvements (May 2003)	
90	Limitations – Standardizing Limitation Periods for Actions on Insurance Contracts (August 2003)	
91	Exemption of Future Income Plans (May 2004)	
92	Exemption of Future Income Plans on Death (May 2004)	
93	Family Law Project – The Conclusion (June 2004)	Family Law Act enacted as S.A. 2003, c. F-4.5. Not yet proclaimed.

	REPORTS FOR DISCUSSION	NOTE
1*	Protection of Trade Secrets (February 1984)	
2*	Matrimonial Property: Division of Pension Benefits upon Marriage Breakdown (May 1985)	
3*	Remedies of Unsecured Creditors (May 1986)	
4	Limitations (September 1986)	
5	Financial Assistance by a Corporation: Section 42, The Business Corporations Act (Alberta) (August 1987)	
6	Sterilization Decisions: Minors and Mentally Incompetent Adults (March 1988)	
7	Enduring Powers of Attorney (February 1990)	
8	Towards a New Alberta Land Titles Act (August 1990)	
9	Mortgage Remedies in Alberta (April 1991)	
10	Revision of the Surrogate Rules (October 1991)	
11*	Advance Directives and Substitute Decision–Making in Personal Health Care (November 1991)	
12	Non-Pecuniary Damages in Wrongful Death Actions — A Review of Section 8 of the Fatal Accidents Act (June 1992)	
13	Report on Liens (September 1992)	
14	The Matrimonial Home (March 1995)	

	REPORTS FOR DISCUSSION	NOTE
15*	Domestic Abuse: Toward an Effective Legal Response (June 1995)	
16	Reform of the Intestate Succession Act (January 1996)	
17	Division of Matrimonial Property on Death (March 1998)	
18	Family Law (October 1998) 18.1 Overview 18.2 Spousal Support 18.3 Child Support 18.4 Child Guardianship, Custody and Access	
19	Order of Application of Assets in Satisfaction of Debts and Liabilities (September 2001)	

	ISSUES PAPERS	NOTE
1	Towards a New Arbitration Act for Alberta (July 1987)	
2	Towards Reform of the Law Relating to Cohabitation Outside Marriage (October 1987)	
3	Public Inquiries (November 1991)	
4	Limited Liability Partnerships and Other Hybrid Business Entities (March 1998)	
5	Enduring Powers of Attorney (February 2002)	

	DISCUSSION PAPERS	NOTE
1	Civil Litigation: The Judicial Mini-Trial (August 1993)	

	RESEARCH PAPERS	NOTE
1*	Rent Control; Security of Tenures (November 1975)	
2*	Entry of Landlord; Locks and Security Devices (November 1975)	
3*	Obligation to Repair; Security Deposits (November 1975)	
4*	Termination Procedures; Failure of Tenants to Pay Rent; Overholding Tenants (November 1975)	
6*	Resolution of Disputes; Landlord and Tenant (Advisory) Boards; Distress (November 1975)	
7*	Contract or Property Law; Form and Delivery of Lease; Right to Assign or Sublet (November 1975)	
8*	Mobile Homes (November 1975)	
9*	Consent of Minors to Medical Treatment (May 1975)	
10	Illegitimacy (June 1974)	
11*	Administration of Family Law: The Unified Family Court: Constitutional Opinions (May 1978)	
12*	Statute of Frauds (March 1979)	
13	Matrimonial Support Failures: Reasons, Profiles and Perceptions of Individuals Involved (Canadian Institute for Research in the Behavioural and Social Sciences: March 1981)	

	RESEARCH PAPERS	NOTE
14	Conference Materials, International Invitational Conference on Matrimonial and Child Support, 27-30 May 1981 (October 1982)	
15	Survey of Adult Living Arrangements: A Technical Report (November 1984)	
16	The Operation of the Unsecured Creditors' Remedies System in Alberta (March 1986)	
17*	Corporate Directors' Liability (February 1989)	
18	Report on Referees (February 1990)	The principal recommendation of Research Paper 18 was implemented by Alta. Reg. 308/91.
19	Dispute Resolution: A Directory of Methods, Projects and Resources (July 1990)	
20	Court-Connected Family Mediation Programs in Canada (May 1994)	
21	Recognition of Rights and Obligations in Same Sex Relationships (January 2002)	

CONSULTATION MEMORANDA

1 Division Of Pension Benefits Upon Marriage Breakdown (September 1995)

2 Reasonable Accommodation In The Workplace (November 1995)

3 Business Names Legislation (December 1996)

4 Should a Claim for Loss of Chance of Future Earnings Survive Death? (August 1997)

5 Should a Claim for Punitive Damages Survive Death? (December 1998)

6 Powers and Procedures for Administrative Agencies: Model Code (April 1999)

7 Trustee Investment Powers (September 1999)

8 Wills: Non-Compliance with Formalities (December 1999)

9 Class Actions (March 2000)

10 Standardizing Limitation Periods for Actions on Insurance Contracts (December 2001)

11 Creditor Access to Future Income Plans (June 2002)

CONSULTATION MEMORANDA
Rules Project Series

12.1 Commencement of Proceedings in Queen's Bench (October 2002)

12.2 Document Discovery and Examination for Discovery (October 2002)

12.3 Expert Evidence and "Independent" Medical Examinations (February 2003)

12.4 Parties (March 2003)

12.5 Management of Litigation (March 2003)

12.6 Promoting Early Resolution of Disputes by Settlement (July 2003)

12.7 Discovery and Evidence Issues: Commission Evidence, Admissions, Pierringer Agreements and Innovative Procedures (July 2003)

12.8 Pleadings (October 2003)

12.9 Joining Claims and Parties, Including Third Party Claims, Counterclaims, and Representative Actions (February 2004)

PRACTICE MANUALS

Alberta Surrogate Forms

- Integration of rules and forms
- Comprehensive collection of forms
- Computer templates including completion instructions
- User notes

Arbitration Clauses Guide

- Checklists of procedural rules under the Act
- Discussion of sample clauses and agreements
- Complete set of procedural rules ready for adoption

(*Manuals are available from the Legal Education Society of Alberta*)

OTHER PUBLICATIONS

Renovating the Foundation: Proposals for a Model Land Recording and Registration Act for the Provinces and Territories of Canada (A report by the Joint Land Titles Committee – Alberta, British Columbia, Manitoba, The Council of Maritime Premiers, N.W.T., Ontario, Saskatchewan and Yukon) (July 1990)

Final Revisions. Renovating the Foundation: Proposals for a Model Land Recording and Registration Act for the Provinces and Territories of Canada. (A report by the Joint Land Titles Committee – Alberta, British Columbia, Manitoba, N.W.T., Ontario, Saskatchewan and Yukon)
(March 1993)

The Self-Regulation of the Legal Profession in Canada and in England and Wales by W.H. Hurlburt. Co-published by: The Law Society of Alberta and the Alberta Law Reform Institute. (January 2000)

AVAILABLE ON OUR WEBSITE **<http://www.law.ualberta.ca/alri>**

Alberta Justice – Alberta Family Law Reform 2002
Submission by the Alberta Law Reform Institute (March 2002)

Investment by Nonprofit Entities -- Feasibility Study
(May 2002)

Rules of Court Publications —
Alberta Rules of Court Project – Issues Paper for the Legal Community
(October 2001)

Alberta Rules of Court Project – Public Consultation Paper and Questionnaire
(January 2002)

Alberta Rules of Court Project – Public Consultation Report (September 2002)

Alberta Rules of Court Project – Report on Legal Community Consultation
(September 2002)

Alberta Rules of Court Project – Family Law Issues Paper (October 2002)

Alberta Rules of Court Project – Judicial Review and Administrative Law –
Identified Issues (March 2003)

Alberta Rules of Court Project – Focus Group Report (March 2003)

Alberta Rules of Court Project – Interim Report (February 2004)

ISSN 0229-6276
ISBN 1-896078-33-8